Montana Code Annotated
2025

Public Retirement Systems • Education
Libraries, Arts & Antiquities
Parks, Recreation, Sports & Gambling
Civil Procedure • Evidence

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Part 1
General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

Cross-References

Public employees' retirement system, Title 19, ch. 3.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Administrator" means the employee of the department who is designated as the state social security administrator and is delegated the authority to carry out the requirements of this chapter.

(2) "Commissioner of social security" means the commissioner of the United States social security administration or an individual to whom the commissioner of social security has delegated any function under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions, except:

(a) with respect to an action taken prior to April 11, 1953, the term means the federal security administrator or an individual to whom the administrator delegated any function; and

(b) with respect to an action taken on or after April 11, 1953, through March 30, 1995, the term means the secretary of the United States department of health and human services or an individual to whom the secretary delegated any function.

(3) "Department" means the department of administration provided for in 2-15-1001.

(4) "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

(5) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

(6) (a) "Employment" means any service performed for the employer by an employee of the state or any political subdivision of the state, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the commissioner of social security entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the commissioner of social security pursuant to 19-1-304.

(7) "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the Internal Revenue Code.

(8) "Political subdivision" means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, including but not limited to school districts and housing authorities.

(9) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(10) "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that act.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102; amd. Sec. 32, Ch. 10, L. 1993; amd. Sec. 1, Ch. 58, L. 1999; amd. Sec. 47, Ch. 114, L. 2003; amd. Sec. 1, Ch. 138, L. 2015; amd. Sec. 1, Ch. 250, L. 2015.

Cross-References

Public Employees' Retirement Board, 2-15-1009.
Local Government, Title 7.
Wages defined, 39-3-201.

19-1-103. Exclusions. This chapter does not apply to the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108; amd. Sec. 2, Ch. 250, L. 2015.

Cross-References

Local government — fire protection, Title 7, ch. 33.
Firefighters' unified retirement, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act, 42 U.S.C. 418(d)(6), the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered by the system.

(2) Pursuant to section 218(c) of the Social Security Act, 42 U.S.C. 418(c), the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' and peace officers' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered by those systems.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 101, Ch. 42, L. 1997; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 250, L. 2015.

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Police retirement — statewide plan, Title 19, ch. 9.
Police retirement — local funds, Title 19, ch. 19.

Part 2
Administration

19-1-201. Department may adopt rules. The department may adopt rules necessary to implement the provisions of this chapter.

History: En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107; amd. Sec. 4, Ch. 250, L. 2015.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Public Employees' Retirement Board, 2-15-1009.
State agency defined, 19-1-102.

19-1-202. Costs of administration. All costs for the administration of this chapter must be charged to the department.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983; amd. Sec. 3, Ch. 412, L. 1995; amd. Sec. 2, Ch. 58, L. 1999; amd. Sec. 5, Ch. 250, L. 2015.

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Local government — initiatives and referendums, Title 7, ch. 5, part 1.
Municipal ordinances and resolutions, Title 7, ch. 5, part 42.

19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, the governor shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 229, Ch. 56, L. 2009.

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Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
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19-1-302. Conduct of referendum. The governor shall designate the department director, who shall direct the administrator to conduct and supervise a referendum. The referendum must be conducted in accordance with the requirements of section 218(d)(3) of the Social Security Act, 42 U.S.C. 418(d)(3), on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3); amd. Sec. 6, Ch. 250, L. 2015.

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act, 42 U.S.C. 418(d)(3)(C), to be given to employees must contain or be accompanied by a statement, in the form and detail that the department director, acting through the administrator, considers necessary and sufficient, informing the employees of the rights that will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4); amd. Sec. 7, Ch. 250, L. 2015.

Cross-References

Local government ballot issues, Title 13, ch. 28.

19-1-304. Certification of referendum by governor. When the department receives satisfactory evidence that the conditions specified in section 218(d)(3) of the Social Security Act, 42 U.S.C. 418(d)(3), have been met, the governor shall certify the results of the referendum to the commissioner of social security.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5); amd. Sec. 33, Ch. 10, L. 1993; amd. Sec. 2, Ch. 138, L. 2015; amd. Sec. 8, Ch. 250, L. 2015.

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19-1-401. Authority for federal-state agreement. The department director, with the approval of the governor, may enter into an agreement on behalf of the state with the commissioner of social security, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 34, Ch. 10, L. 1993; amd. Sec. 3, Ch. 138, L. 2015; amd. Sec. 9, Ch. 250, L. 2015.

Cross-References

Declaration of policy, 19-1-101.

19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and other appropriate provisions as the department director and the commissioner of social security agree upon. Except as otherwise required or permitted by the Social Security Act regarding the services to be covered, the agreement must provide that:

(1) benefits will be provided for employees whose services are covered by the agreement and for their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

(3) all services that constitute employment and are performed by employees of the state must be covered by the agreement; and

(4) all services that constitute employment, are performed by employees of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the department under Title 19, chapter 1, part 5, must be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 35, Ch. 10, L. 1993; amd. Sec. 102, Ch. 42, L. 1997; amd. Sec. 1, Ch. 161, L. 2009; amd. Sec. 4, Ch. 138, L. 2015; amd. Sec. 10, Ch. 250, L. 2015.

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19-1-501. Submission of plan and agreement. Each political subdivision of the state shall submit for approval by the department a plan and agreement between the state and the political subdivision for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of the act, to employees of the political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part); amd. Sec. 11, Ch. 250, L. 2015.

Cross-References

Retirement systems to be considered separate, 19-1-104.

19-1-502. Approval of plan and agreement by department. (1) A plan and agreement and any amendment of the plan and agreement must be approved by the department if the administrator finds that the plan and agreement, or an amendment to the plan and agreement, are in conformity with the department's requirements.

(2) The department may not finally refuse to approve a plan and agreement submitted by a political subdivision under 19-1-501 and may not terminate an approved plan and agreement without reasonable notice and opportunity for hearing to the affected political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part); amd. Sec. 12, Ch. 250, L. 2015.

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19-1-503. Required provisions of plan and agreement. A plan and agreement may not be approved by the department unless:

(1) they are in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) they provide that all services that constitute employment and that are performed by employees of the political subdivisions will be covered by the plan and agreement, except that the plan and agreement may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security Act, 42 U.S.C. 418(c)(3)(B), is applicable.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2); amd. Sec. 36, Ch. 10, L. 1993; amd. Sec. 103, Ch. 42, L. 1997; amd. Sec. 2, Ch. 161, L. 2009; amd. Sec. 13, Ch. 250, L. 2015.

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History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

19-1-602. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986; amd. Sec. 4, Ch. 412, L. 1995; amd. Sec. 3, Ch. 58, L. 1999.

19-1-603. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

19-1-604. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

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State finance — accounting, Title 17, ch. 2.

19-1-701. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 must be required to pay, for the period of coverage, contributions with respect to wages equal to the amount of employee tax that would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act. The liability arises in consideration of the employee's retention in the service of the state or entry into service.

(2) The contribution imposed by this section must be collected by deducting the amount of the contribution from wages paid, but failure to make the deduction does not relieve the employee from liability for the contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or a refund if adjustment is impracticable must be made, without interest, in the manner and at times that the department prescribes.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1; amd. Sec. 230, Ch. 56, L. 2009; amd. Sec. 14, Ch. 250, L. 2015.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-1-703. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

19-1-704. Contribution by political subdivision. Each political subdivision with a plan and agreement approved under part 5 of this chapter shall pay, at the time or times prescribed by the department, contributions with respect to wages, as defined in 19-1-102, in the amounts and at the rates specified in the applicable agreement entered into by the department director on behalf of the state under 19-1-401 and 19-1-402.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a); amd. Sec. 15, Ch. 250, L. 2015.

Cross-References

Department may adopt rules, 19-1-201.

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry into employment impose upon each of its employees, as to services that are covered by an approved plan, a contribution with respect to wages, not exceeding the amount of the employee tax that would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act and shall deduct the amount of the contributions from wages paid.

(2) Contributions collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability for the contributions.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b); amd. Sec. 231, Ch. 56, L. 2009.

Cross-References

Required provisions of plan and agreement, 19-1-503.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-706. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.

Part 8
Participation of Teachers

Part Cross-References

Teachers' retirement, Title 19, ch. 20.
Education — teachers, superintendents, and principals, Title 20, ch. 4.

19-1-801. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.

Cross-References

Teachers' retirement, Title 19, ch. 20.

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. On approval by the board of trustees, a school district of the state may conduct and supervise a referendum or may request that the department conduct and supervise a referendum. The referendum must be conducted pursuant to section 218 of the federal Social Security Act, 42 U.S.C. 418, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicate that the staff and teachers approve social security coverage, then the board of trustees shall certify to the department that the conditions for social security coverage, required by section 218 of the Social Security Act, have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109; amd. Sec. 16, Ch. 250, L. 2015.

Cross-References

Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
Social Security — referendum and certification, Title 19, ch. 1, part 3.
Approval of plan and agreement by department, 19-1-502.
School districts, Title 20, ch. 6.

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).

Cross-References
Declaration of policy, 19-1-101.

19-1-813. Collection of contributions. The fiscal officer of the school district shall collect the contributions required under section 218 of the Social Security Act, 42 U.S.C. 418, from the staff and teachers by payroll deduction and from the school district as the employer.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2); amd. Sec. 3, Ch. 161, L. 2009.

Cross-References
Fund structure, 17-2-102.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-814. Repealed. Sec. 5, Ch. 161, L. 2009.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the department shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;
(2) are administered by the same executive officer; and
(3) have payroll calculations made in the same payroll application.

History: En. Sec. 1, Ch. 350, L. 1983; amd. Sec. 17, Ch. 250, L. 2015.

19-1-816 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

Cross-References
Retirement systems to be considered separate, 19-1-104.
Teachers' retirement, Title 19, ch. 20.

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall direct the department to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act, 42 U.S.C. 418.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2); amd. Sec. 18, Ch. 250, L. 2015.

Cross-References
Local government — initiative and referendum, Art. XI, sec. 8, Mont. Const.
Local government — initiatives and referendums, Title 7, ch. 5, part 1.
PERS — authorization of referendum by Governor, 19-1-301.

19-1-823. Certification by governor. On the department's notification that a majority of votes in the referendum were cast in favor of participation in social security, the governor, through the department, shall certify to the commissioner of social security that the conditions set forth in section 218 of the Social Security Act, 42 U.S.C. 418, have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3); amd. Sec. 37, Ch. 10, L. 1993; amd. Sec. 5, Ch. 138, L. 2015; amd. Sec. 19, Ch. 250, L. 2015.

Cross-References
Public retirement systems — certification of referendum by Governor, 19-1-304.

19-1-824. Federal-state agreement. On certification, the governor shall direct the department director to enter into a modification to the existing agreement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, 42 U.S.C.

418, to secure coverage for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: **En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4); amd. Sec. 20, Ch. 250, L. 2015.**

Cross-References

Federal-state agreement, Title 19, ch. 1, part 4.

19-1-825. Collection of contributions. The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218 of the Social Security Act, 42 U.S.C. 418, from the teachers in the retirement system of that institution, by payroll deductions.

History: **En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6); amd. Sec. 4, Ch. 161, L. 2009.**

Cross-References

Board of Regents of Higher Education, Art. X, sec. 9, Mont. Const.; 2-15-1505.
Contribution by political subdivision, 19-1-704.
State employer to include costs in budget, 19-3-317.
Employer to furnish itemized statement of deductions, 39-3-101.

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions of this part that relate to the law must be applied to the amended law or the superseding law.

History: **En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7); amd. Sec. 21, Ch. 250, L. 2015.**

Cross-References

State law — subsequent amendments, 1-2-108.
Contents of federal-state agreement, 19-1-402.

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Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Social Security, Title 19, ch. 1.
Limitations on payment of benefits if beneficiary causes member's death, 19-2-804.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement — general provisions, Title 19, ch. 5, part 1.
Highway patrol retirement — general provisions, Title 19, ch. 6, part 1.
Sheriffs' retirement — general provisions, Title 19, ch. 7, part 1.
Game wardens' and peace officers' retirement — general provisions, Title 19, ch. 8, part 1.
Police retirement — statewide plan — general provisions, Title 19, ch. 9, part 1.
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Police retirement — local funds — general provisions, Title 19, ch. 19, part 1.
Teachers' retirement — general provisions, Title 19, ch. 20, part 1.

Part 1
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19-2-103. Renumbered 19-50-103. Code Commissioner, 1993.

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19-2-203. Renumbered 19-50-203. Code Commissioner, 1993.

19-2-204. Renumbered 19-50-204. Code Commissioner, 1993.

19-2-205. Repealed. Sec. 10, Ch. 472, L. 1981.

History: En. 68-2708 by Sec. 8, Ch. 264, L. 1974; amd. Sec. 3, Ch. 60, L. 1977; R.C.M. 1947, 68-2708.

19-2-206. Renumbered 19-50-206. Code Commissioner, 1993.

Part 3
General Provisions

19-2-301. Short title. This chapter may be cited as "The Public Employees' Retirement Act".

History: En. Sec. 1, Ch. 265, L. 1993.

19-2-302. Applicability. Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under chapters 3, 5 through 9, and 13 of this title.

History: En. Sec. 2, Ch. 265, L. 1993; amd. Sec. 4, Ch. 471, L. 1999.

19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Allowance" means predetermined remuneration from the employer to the employee for expenses incurred while rendering services or to defray higher than normal costs for necessities, such as housing or travel.

(9) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(10) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(11) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(12) "Board" means the public employees' retirement board provided for in 2-15-1009.

(13) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(14) "Covered employment" means employment in a covered position.

(15) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(16) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(18) "Department" means the department of administration.

(19) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(20) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the distributee.

(21) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(22) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(23) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(24) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(25) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(26) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(28) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(29) "Excess earnings" means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average compensation.

(30) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(31) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(32) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(33) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(34) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(35) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(36) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age or both age and length of service, as

specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(37) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(38) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(39) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(40) "Regular contributions" means contributions required from members under a retirement plan.

(41) "Regular interest" means interest at rates set from time to time by the board.

(42) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(43) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(44) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (11)(b).

(45) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(46) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(47) "Service" means employment of an employee in a position covered by a retirement system.

(48) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(49) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(50) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(51) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(52) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(53) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(54) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (54), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(55) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(56) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(57) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, except as provided in subsection (57)(b), a member or the status of a member who has at least 5 years of membership service;

(b) with respect to a member of the highway patrol officers' retirement system established in Title 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10 years of membership service; or

(c) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(58) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(59) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102.

History: **En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983; amd. Sec. 1, Ch. 45, L. 1987; amd. Sec. 2, Ch. 71, L. 1989; amd. Sec. 3, Ch. 265, L. 1993; Sec. 19-3-104, MCA 1991; redes. 19-2-303 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 412, L. 1995; amd. Sec. 5, Ch. 370, L. 1997; amd. Secs. 4, 46(1), Ch. 58, L. 1999; amd. Sec. 5, Ch. 471, L. 1999; amd. Secs. 4, 99(1)(b), Ch. 562, L. 1999; amd. Sec. 4, Ch. 99, L. 2001; amd. Sec. 1, Ch. 149, L. 2001; amd. Sec. 3, Ch. 423, L. 2001; amd. Sec. 1, Ch. 490, L. 2001; amd. Sec. 48, Ch. 114, L. 2003; amd. Sec. 3, Ch. 429, L. 2003; amd. Sec. 1, Ch. 329, L. 2005; amd. Sec. 1, Ch. 283, L. 2009; amd. Sec. 2, Ch. 284, L. 2009; amd. Sec. 4, Ch. 99, L. 2011; amd. Sec. 1, Ch. 178, L. 2013; amd. Sec. 1, Ch. 240, L. 2013; amd. Sec. 2, Ch. 272, L. 2013; amd. Sec. 1, Ch. 386, L. 2013; amd. Sec. 1, Ch. 170, L. 2015; amd. Sec. 2, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Part 4
Administration

Part Cross-References

Police retirement — statewide plan — extension of coverage by local government employers, Title 19, ch. 9, part 2.

Firefighters' unified retirement — extension of coverage by local government employers, Title 19, ch. 13, part 2.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 17, part 2.

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

Discrimination in insurance and retirement plans, 49-2-309.

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the judicial district in which the appealing party resides or, if the person resides outside the state, the first judicial district, Lewis and Clark County.

(2) A quorum of the board is four members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801; amd. Sec. 4, Ch. 265, L. 1993; Sec. 19-3-301, MCA 1991; redes. 19-2-401 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 412, L. 1995; amd. Sec. 6, Ch. 471, L. 1999; amd. Sec. 2, Ch. 490, L. 2001; amd. Sec. 6, Ch. 535, L. 2021.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.
Attorney General — duties generally, 2-15-501.
Department of Administration, Title 2, ch. 15, part 10.
Public Employees' Retirement Board, 2-15-1009.
Representation on Board of Investments, 2-15-1808.

19-2-402. Compensation of board members. Members shall be entitled to compensation as provided in 2-15-124.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983; amd. Sec. 5, Ch. 650, L. 1985; Sec. 19-3-302, MCA 1991; redes. 19-2-402 by Sec. 238, Ch. 265, L. 1993.

19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) (a) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(b) Information from a member's record may be shared with a member's employer only as far as necessary to conduct official business on behalf of the member.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of 2-6-1017. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993; (10)En. Sec. 2, Ch. 412, L. 1995; amd. Sec. 7, Ch. 471, L. 1999; amd. Sec. 5, Ch. 562, L. 1999; amd. Sec. 5, Ch. 99, L. 2001; amd. Sec. 4, Ch. 429, L. 2003; amd. Sec. 5, Ch. 99, L. 2011; amd. Sec. 2, Ch. 178, L. 2013; amd. Sec. 45, Ch. 348, L. 2015; amd. Sec. 1, Ch. 400, L. 2023.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Use by Board of mailing lists of retirement system participants to send materials on behalf of third parties, 2-6-1017.

Governmental code of fair practices, Title 49, ch. 3.

19-2-404. Appointment and compensation of administrative staff. The board shall hire and fix the compensation of an executive director and other necessary employees to assist the board in administering the retirement systems. The compensation of the executive director and employees must be established in accordance with Title 2, chapter 18.

History: En. Sec. 6, Ch. 265, L. 1993; amd. Sec. 17, Ch. 532, L. 1997; amd. Sec. 6, Ch. 562, L. 1999.

19-2-405. Employment of actuary — annual investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make and report on an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(5) The board shall require the actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

(7) The board shall provide copies of the reports required pursuant to subsections (2) and (5) to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210.

(8) The board shall require the actuary to prepare for each employer participating in a retirement system the disclosures or the information required to be included in the disclosures as required by law and by the governmental accounting standards board or its generally recognized successor.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 471, L. 1999; amd. Sec. 49, Ch. 114, L. 2003; amd. Sec. 5, Ch. 285, L. 2007; amd. Sec. 5, Ch. 155, L. 2013; amd. Sec. 2, Ch. 240, L. 2013; amd. Sec. 2, Ch. 248, L. 2015; amd. Sec. 6, Ch. 729, L. 2023; amd. Sec. 3, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 636, L. 2025. Amendment effective July 1, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Valuations for police officers' retirement systems, 19-19-205.

Valuations for teachers' retirement system, 19-20-203.

19-2-406. Disability retirement — application — determination — benefit conversion — rules. (1) (a) An active or inactive member may apply for disability retirement in a manner prescribed by the board. However, an application may also be filed on the member's behalf by the head of the office or department in which the member is or was last employed, by any other individual, or by the board.

(b) The application must be filed within 12 months after the member's termination from employment.

(2) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(3) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(4) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(5) The disability retirement benefit paid to a member of the defined benefit plans provided for in Title 19, chapters 9 and 13, remains a disability retirement benefit when the member attains normal retirement age, but the disability retirement benefit is no longer subject to a medical examination of the member.

(6) The disability retirement benefit paid to a member of the defined benefit plan provided for in Title 19, chapter 5, 6, 7, or 8, remains a disability retirement benefit when the member attains normal retirement age, but the disability retirement benefit is no longer subject to a medical examination of the member.

History: En. Sec. 1, Ch. 597, L. 1981; amd. Sec. 8, Ch. 265, L. 1993; Sec. 19-5-611, MCA 1991; redes. 19-2-406 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 7, Ch. 412, L. 1995; amd. Sec. 9, Ch. 471, L. 1999; amd. Sec. 7, Ch. 562, L. 1999; amd. Sec. 6, Ch. 99, L. 2001; amd. Sec. 4, Ch. 423, L. 2001; amd. Sec. 3, Ch. 178, L. 2013; amd. Sec. 3, Ch. 477, L. 2025; amd. Sec. 1, Ch. 596, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 3, Ch. 477, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 596, L. 2025. Amendment effective May 13, 2025.

The amendment to subsection (5) made by sec. 3, Ch. 477, L. 2025, was rendered void by sec. 27, Ch. 477, L. 2025, a coordination section.

Retroactive Applicability: Section 5, Ch. 596, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to members of the municipal police officers' retirement system and the firefighters' unified retirement system who become disabled as a direct result of the member's service in the line of duty on or before January 1, 2025."

19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;

(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, and other information required under applicable governmental accounting standards and as determined by the board.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; redes. 19-2-407 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 471, L. 1999; amd. Sec. 8, Ch. 562, L. 1999; amd. Sec. 6, Ch. 285, L. 2007; amd. Sec. 2, Ch. 170, L. 2015.

Cross-References

Department of Administration, 2-15-1001.

General fiscal duties of State Treasurer, 17-1-111.

Separate investment funds, 17-6-203.

19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the Volunteer Firefighters' Compensation Act, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan;

(c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); or

(d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986; amd. Sec. 10, Ch. 265, L. 1993; Sec. 19-3-805, MCA 1991; redes. 19-2-408 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 18, Ch. 532, L. 1997; amd. Sec. 1, Ch. 286, L. 1999; amd. Sec. 11, Ch. 471, L. 1999; amd. Sec. 9, Ch. 562, L. 1999; amd. Sec. 50, Ch. 114, L. 2003; amd. Sec. 7, Ch. 285, L. 2007; amd. Sec. 4, Ch. 64, L. 2011.

19-2-409. Plans to be funded on actuarially sound basis — definition. (1) As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For the purposes of this section, "actuarially sound basis" means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan.

(2) (a) For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(b) For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member.

History: En. Sec. 5, Ch. 287, L. 1997; amd. Sec. 12, Ch. 471, L. 1999; amd. Sec. 7, Ch. 729, L. 2023; amd. Sec. 4, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 636, L. 2025. Amendment effective July 1, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

19-2-410. Presentation to board of investments. The board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

History: En. Sec. 2, Ch. 285, L. 2007.

Part 5
Management and Investment of Pension Trust Funds

Part Cross-References

Investment of public funds and public retirement system assets, Art. VIII, sec. 13, Mont. Const.
Public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Board of Investments, 2-15-1808.
State Treasurer — duties generally, 17-1-111.
State finance — investments, Title 17, ch. 6, part 2.
Separate investment funds, 17-6-203.
Firefighters' retirement — management and protection of fund, Title 19, ch. 18, part 2.
Police retirement — local funds — management of funds, Title 19, ch. 19, part 2.
Teachers' retirement — management of funds, Title 19, ch. 20, part 5.

19-2-501. Pension trust funds established. A pension trust fund is established and maintained for each retirement plan within a system subject to this chapter as enumerated in 19-2-302.

History: En. Sec. 11, Ch. 265, L. 1993; amd. Sec. 13, Ch. 471, L. 1999.

19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.

History: En. Sec. 12, Ch. 265, L. 1993; amd. Sec. 19, Ch. 532, L. 1997; amd. Sec. 2, Ch. 329, L. 2005.

19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in chapter 3, part 21, of this title, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4); amd. Sec. 13, Ch. 265, L. 1993; Sec. 19-3-601, MCA 1991; redes. 19-2-503 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 471, L. 1999; amd. Sec. 10, Ch. 562, L. 1999.

19-2-504. Investment of pension trust funds. (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds and the defined contribution retirement plan's long-term disability plan trust fund provided for in 19-3-2141 may be commingled for investment purposes, to the extent permitted by Montana law and as permitted under I.R.S. Revenue Ruling 81-100,1981-1 Cumulative Bulletin 326, I.R.S. Revenue Ruling 2004-67, 2004-2 Cumulative Bulletin 28, I.R.S. Revenue Ruling 2011-1, 2011-2 Internal Revenue Bulletin 251, and I.R.S. Revenue Ruling 2014-24, 2014-37 Internal Revenue Bulletin 529 if:

(a) the trust funds are operated or maintained exclusively for the commingling and collective investment of money; and

(b) the trust funds in the group trust consist exclusively of trust assets held under retirement systems or plans qualified under one or more of the following:

(i) section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(ii) individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, 26 U.S.C. 408(e);

(iii) eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(iv) governmental plans under section 401(a)(24) of the Internal Revenue Code, 26 U.S.C. 401(a)(24).

(4) For purposes of subsection (3), a trust includes a custodial account that is treated as a trust under section 401(f) or 457(g)(3) of the Internal Revenue Code, 26 U.S.C. 401(f) or 457(g)(3).

(5) The board shall adopt any collective or common group trust to which assets of the retirement systems or plans are transferred for investment pursuant to subsection (3) as part of the respective retirement systems or plans by executing appropriate participation agreements, adoption agreements, or trust agreements with the group trust's trustee.

(6) The separate accounts maintained by the group trust for retirement systems or plans pursuant to subsection (7) may not be used for or diverted to any purpose other than for the exclusive benefit of the members and beneficiaries of those retirement systems or plans.

(7) For purposes of valuation, separate accounts must be maintained for each system or plan, and the value of the separate account maintained by the group trust for the system or plan must be the fair market value of the portion of the group trust held for the system or plan, determined in accordance with generally recognized valuation procedures.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 15, Ch. 471, L. 1999; amd. Sec. 1, Ch. 140, L. 2015.

19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) The accumulated contributions of a vested or nonvested member that are not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(6) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 58, L. 1999; amd. Sec. 16, Ch. 471, L. 1999; amd. Sec. 11, Ch. 562, L. 1999; amd. Sec. 7, Ch. 99, L. 2001; amd. Sec. 4, Ch. 178, L. 2013.

Cross-References

State finance — investments, Title 17, ch. 6, part 2.
Police retirement — local funds — limit on use of fund, 19-19-202.
Teachers' retirement — restrictions on use of money, 19-20-502.
Suretyship, Title 28, ch. 11, part 4.

19-2-506. Payment of contributions by employers — accompanying reports — penalty — liability. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer.

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Employer reporting errors that are corrected at a later date must be accompanied by any contributions and interest due in accordance with board rule.

(5) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(6) The board is not responsible or liable for any incorrect reporting or erroneous payment of contributions by an employer.

(7) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials.

History: **En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979; amd. Sec. 1, Ch. 138, L. 1991; amd. Sec. 16, Ch. 265, L. 1993; Sec. 19-3-802, MCA 1991; redes. 19-2-506 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 562, L. 1999; amd. Sec. 8, Ch. 99, L. 2001; amd. Sec. 5, Ch. 429, L. 2003; amd. Sec. 2, Ch. 283, L. 2009; amd. Sec. 6, Ch. 99, L. 2011; amd. Sec. 4, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-2-507. Transfer between funds. Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the board.

History: **En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981; amd. Sec. 17, Ch. 265, L. 1993; Sec. 19-3-605, MCA 1991; redes. 19-2-507 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 13, Ch. 562, L. 1999.**

Cross-References

Department defined, 19-2-303.

19-2-508 through 19-2-510 reserved.

19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or the university system retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or the university system retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or the university system retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or the university system retirement program as a result of incorrect reporting by an employer or other reporting agency.

History: **En. Sec. 3, Ch. 490, L. 2001; amd. Sec. 1, Ch. 38, L. 2003; amd. Sec. 1, Ch. 282, L. 2013.**

Cross-References

Availability of remedies — damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Liability, Title 27, ch. 1, part 7.

Part 6

Termination of Membership and Refunds

Part Cross-References

Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, 19-7-301.
Game wardens' and peace officers' retirement — membership, 19-8-301.
Police retirement — statewide plan — membership, 19-9-301.
Firefighters' unified retirement — membership, 19-13-301.

19-2-601. Termination of membership. If a member's accumulated contributions under a retirement system are refunded, the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system.

History: **En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603; amd. Sec. 18, Ch. 265, L. 1993; Sec. 19-3-406, MCA 1991; redes. 19-2-601 by Sec. 238, Ch. 265, L. 1993.**

19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of $200 to $1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible unless a written application is filed within 90 days of terminating service pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of $200 or more of accumulated contributions, the board shall make a direct rollover distribution of any eligible rollover distribution allowed under section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. As of January 1, 2008, an eligible retirement plan includes a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account that is not an eligible rollover distribution must be paid directly to the recipient.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981; amd. Sec. 19, Ch. 265, L. 1993; Sec. 19-3-703, MCA 1991; redes. 19-2-602 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 58, L. 1999; amd. Secs. 14, 99(2), Ch. 562, L. 1999; amd. Sec. 9, Ch. 99, L. 2001; amd. Sec. 3, Ch. 329, L. 2005; amd. Sec. 1, Ch. 128, L. 2007; amd. Sec. 3, Ch. 284, L. 2009; amd. Sec. 1, Ch. 195, L. 2017.

Cross-References

PERS — member's contribution, 19-3-315.
Judges' retirement — member's contribution, 19-5-402.
Highway patrol retirement — member's contribution, 19-6-402.
Sheriffs' retirement — member's contributions 19-7-403.
Game wardens' and peace officers' retirement — member's contribution, 19-8-502.
Police retirement — statewide plan — member's contribution, 19-9-710.
Firefighters' unified retirement — member's contribution, 19-13-601.
Firefighters' retirement — refund of firefighter's contribution, 19-18-502.
Police retirement — local funds — refund of officer's contribution, 19-19-303.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-2-603. Reinstatement after withdrawal of contributions. Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes an active member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person, while either an active or inactive vested member, may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus interest at the actuarial assumed rate of return in effect at the time of the redeposit. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906; amd. Sec. 20, Ch. 265, L. 1993; Sec. 19-3-704, MCA 1991; redes. 19-2-603 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 17, Ch. 471, L. 1999; amd. Sec. 6, Ch. 429, L. 2003; amd. Sec. 7, Ch. 99, L. 2011; amd. Sec. 2, Ch. 195, L. 2017; amd. Sec. 2, Ch. 400, L. 2023.

Part 7
Service Credit and Additional Contributions

Part Cross-References

PERS — service credit, Title 19, ch. 3, part 5.
Highway patrol retirement — service credit, Title 19, ch. 6, part 8.
Sheriffs' retirement — service credit, Title 19, ch. 7, part 8.
Game wardens' and peace officers' retirement — service credit, Title 19, ch. 8, part 9.
Police retirement — statewide plan — service credit, Title 19, ch. 9, part 4.
Firefighters' unified retirement — service credit, Title 19, ch. 13, part 4.

19-2-701. Service credit. (1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit. Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit.

History: En. Sec. 21, Ch. 265, L. 1993; amd. Sec. 6, Ch. 370, L. 1997; amd. Sec. 15, Ch. 562, L. 1999.

19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The membership service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for service retirement, early retirement, or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits.

History: En. Sec. 22, Ch. 265, L. 1993; amd. Sec. 7, Ch. 370, L. 1997; amd. Sec. 7, Ch. 429, L. 2003.

19-2-703. No duplication of benefits for same service. (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2); amd. Sec. 23, Ch. 265, L. 1993; Sec. 19-3-508, MCA 1991; redes. 19-2-703 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 562, L. 1999; amd. Sec. 10, Ch. 99, L. 2001; amd. Sec. 4, Ch. 329, L. 2005.

Cross-References

Teachers' retirement — no duplication of benefits when more than one period of service, 19-20-407.

19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions or to redeposit amounts withdrawn under 19-2-602.

(3) An eligible member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

(4) Installment payments must be made by personal check paid directly to the board unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments is 3 months, and the maximum installment period is 5 years. If a member making installment payments by personal check ceases to make those payments, the board shall prorate the service credit based on the amount paid.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903; amd. Sec. 24, Ch. 265, L. 1993; Sec. 19-3-702, MCA 1991; redes. 19-2-704 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 412, L. 1995; amd. Sec. 8, Ch. 370, L. 1997; amd. Sec. 7, Ch. 58, L. 1999; amd. Sec. 11, Ch. 99, L. 2001; amd. Sec. 8, Ch. 429, L. 2003; amd. Sec. 5, Ch. 329, L. 2005; amd. Sec. 3, Ch. 283, L. 2009; amd. Sec. 3, Ch. 195, L. 2017; amd. Sec. 5, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

Board to make rules, 19-2-403.

19-2-705. Repealed. Sec. 44, Ch. 58, L. 1999.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605; amd. Sec. 25, Ch. 265, L. 1993; Sec. 19-3-502, MCA 1991; redes. 19-2-705 by Sec. 238, Ch. 265, L. 1993.

19-2-706. Additional service credit for active member involuntarily terminated from employment. (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees' defined benefit plan or the game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system.

History: En. Sec. 5, Ch. 524, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 361, L. 1997; amd. Sec. 8, Ch. 58, L. 1999; amd. Sec. 1, Ch. 118, L. 1999; amd. Sec. 72, Ch. 471, L. 1999; amd. Sec. 1, Ch. 66, L. 2001; amd. Sec. 9, Ch. 429, L. 2003; amd. Sec. 6, Ch. 329, L. 2005; amd. Sec. 8, Ch. 99, L. 2011; amd. Sec. 5, Ch. 178, L. 2013.

19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. Contributions, benefits, and service credit for state military duty are governed by the Montana Military Service Employment Rights Act provided in Title 10, chapter 1, part 10.

History: En. Sec. 9, Ch. 58, L. 1999; amd. Sec. 24, Ch. 381, L. 2005; amd. Sec. 7, Ch. 235, L. 2015.

19-2-708. Rollover of contributions. (1) A member who elects to and is eligible to purchase service credit from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service credit that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

History: **En. Sec. 10, Ch. 58, L. 1999; amd. Sec. 12, Ch. 99, L. 2001; amd. Sec. 10, Ch. 429, L. 2003.**

19-2-709. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service credit, pursuant to 19-2-715 and 19-3-511, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

History: **En. Sec. 11, Ch. 58, L. 1999; amd. Sec. 11, Ch. 429, L. 2003.**

19-2-710. Nonapplication of part to defined contribution plan. Except as otherwise provided in 19-2-715 and chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: **En. Sec. 40, Ch. 471, L. 1999; amd. Sec. 4, Ch. 283, L. 2009.**

19-2-711 through 19-2-714 reserved.

19-2-715. Purchase of Montana public service. (1) (a) An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; and

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system based on the system's most recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of previous employment for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes public service, subject to 19-2-403.

History: **En. Sec. 1, Ch. 429, L. 2003; amd. Sec. 2, Ch. 128, L. 2007; amd. Sec. 5, Ch. 283, L. 2009; amd. Sec. 9, Ch. 99, L. 2011.**

19-2-716. Compromise or settlement of claims by public employees regarding retirement service credits. A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

History: En. Sec. 3, Ch. 306, L. 2017.

Part 8
Beneficiaries

Part Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.

Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.

Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.

Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.

Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.

Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.

Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.

19-2-801. Designation of beneficiary. (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, an order issued pursuant to 40-4-126, or an order issued pursuant to Title 40, chapter 15, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed, the board shall reference the membership form executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that membership form continue to be beneficiaries until the new membership form is filed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership form filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership form for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981; amd. Sec. 1, Ch. 154, L. 1985; amd. Sec. 26, Ch. 265, L. 1993; Sec. 19-3-1301, MCA 1991; redes. 19-2-801 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 9, Ch. 370, L. 1997; amd. Sec. 17, Ch. 562, L. 1999; amd. Sec. 13, Ch. 99, L. 2001; amd. Sec. 12, Ch. 429, L. 2003; amd. Sec. 6, Ch. 283, L. 2009; amd. Sec. 10, Ch. 99, L. 2011; amd. Sec. 6, Ch. 178, L. 2013; amd. Sec. 3, Ch. 248, L. 2015; amd. Sec. 2, Ch. 131, L. 2021; amd. Sec. 6, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated beneficiary. (1) If a member or payment recipient fails to name a designated beneficiary or if a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:
(a) husband or wife;
(b) children;
(c) father and mother;
(d) grandchildren;
(e) brothers and sisters; or
(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 2, Ch. 154, L. 1985; amd. Sec. 27, Ch. 265, L. 1993; Sec. 19-3-1302, MCA 1991; redes. 19-2-802 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 370, L. 1997; amd. Sec. 18, Ch. 562, L. 1999; amd. Sec. 13, Ch. 429, L. 2003; amd. Sec. 11, Ch. 99, L. 2011.

Cross-References

Highway patrol retirement — death payments in absence of survivors, 19-6-903.
Police retirement — statewide plan — payment of death benefits in absence of spouse or child, 19-9-1102.
Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.
Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-18-607.

19-2-803. Payment to custodian of minor beneficiary. (1) Except as provided in subsection (2), if any benefit from a system is payable to a minor, the benefit must be paid to one of the following:
(a) a surviving parent, if any;
(b) a parent awarded custody of the minor in a divorce proceeding;
(c) a custodian designated under Title 72, chapter 26;
(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) When a system member has established a trust for a minor beneficiary, including a dependent child as defined under the provisions of Title 19, chapter 6, 9, or 13, then the benefit must be paid to the trustee of that trust.

(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981; amd. Sec. 28, Ch. 265, L. 1993; Sec. 19-3-1304, MCA 1991; redes. 19-2-803 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 1, Ch. 369, L. 2005; amd. Sec. 3, Ch. 400, L. 2023.

19-2-804. Limitations on payment of benefits to person causing member's death or disability. If a person is convicted of knowingly, purposely, or intentionally causing a member's death or disability, that person may not receive benefits or payments from a retirement system and the benefits must be payable as otherwise provided in statute.

History: En. Sec. 1, Ch. 153, L. 1985; amd. Sec. 29, Ch. 265, L. 1993; Sec. 19-3-1305, MCA 1991; redes. 19-2-804 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Homicide — effect on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

Part 9
Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete. If it is impracticable for the board to determine from the records the length of service, the compensation, or the age of a member or if a member refuses or fails to give the board a statement of the member's state service, compensation, or age, the board may estimate, for the purposes of this title, the length of service, compensation, or age.

History: **En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503; amd. Sec. 30, Ch. 265, L. 1993; Sec. 19-3-1401, MCA 1991; redes. 19-2-901 by Sec. 238, Ch. 265, L. 1993.**

19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) (a) If a member or beneficiary who is a natural person elects, the board shall pay the member's accumulated contributions to the member or beneficiary in a single lump sum.

(b) The lump sum must be paid at the time the initial monthly benefit would otherwise be payable.

(c) An election to receive a single lump sum must be made at least 30 days prior to the first payment date.

(3) A beneficiary that is a charitable organization, the estate of the payment recipient, or a trust is eligible only for a single lump sum.

(4) If a benefit recipient dies before the last day of the month, a pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.

History: **En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1); amd. Sec. 31, Ch. 265, L. 1993; Sec. 19-3-1402, MCA 1991; redes. 19-2-902 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 58, L. 1999; amd. Sec. 18, Ch. 471, L. 1999; amd. Sec. 4, Ch. 284, L. 2009; amd. Sec. 4, Ch. 195, L. 2017.**

Cross-References

Teachers' retirement — benefit payments to be monthly — required minimum distributions, 19-20-703.

19-2-903. Correction of errors and suspension of payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member.

(2) If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:

(a) adjusting the subsequent lump-sum or installment payments from the member or the member's employer;

(b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or

(c) granting the member service credit proportional to the amount actually paid.

(3) If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then upon the discovery of the error, the board shall correct the error.

(4) If the board suspects that a payment is not being delivered to its intended recipient, the board shall suspend the payment. The suspension will continue until the board makes direct contact with the intended recipient and is able to confirm the intended recipient's correct address or direct deposit information. Upon confirmation, payments will resume and any payments suspended must be made to the intended recipient as soon as administratively possible.

(5) (a) Except as provided in subsection (6), if a benefit or payment is overpaid or paid to a person not entitled to receive the benefit or payment, the board may recover the full amount of the improper distribution, plus interest set at the assumed rate of return on the system's investments. The interest must be compounded annually and be applied monthly and must accrue from the date the recipient of the improper distribution received a final determination notice of the improper distribution until the total amount owed to the retirement system pursuant to this subsection (5) is paid in full.

(b) To recover an amount owed pursuant to this subsection (5), the board may adjust future benefit payments or arrange for another method of payment. For collection of amounts due, the board may pursue all remedies available by law to it, including but not limited to initiating a lawsuit, requesting an electronic funds transfer or automated clearinghouse reversal transaction from the recipient's banking institution, or assigning or referring the debt to an attorney or collection agency.

(c) The board is entitled to recover its reasonable costs for pursuing collection, including but not limited to attorney fees or charges assessed by a collection agency. These costs may be added to the principal amount due under this subsection (5) and accrue interest as provided in subsection (5)(a).

(d) The recipient of an improperly paid benefit or payment is liable for repayment of the total amount owed pursuant to this subsection (5).

(e) The board may, for good cause, waive some or all of the interest charges or collection costs that may be assessed under this subsection (5).

(6) (a) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system:

(i) the retirement system may recover the amount owed only with respect to the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice of the amount owed and ending when the amount owed is paid in full; and

(ii) interest may not be charged if the amount owed is paid within 30 days after issuance of the final staff determination.

(b) If the amount owed is not paid in full within 30 days after issuance of the final staff determination, the amount owed accrues interest at the retirement system's actuarially assumed annual rate of return, compounded monthly, beginning on the 31st day after issuance of the final staff determination. Interest continues to accrue until the amount owed to the retirement system is fully paid.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509; amd. Sec. 32, Ch. 265, L. 1993; Sec. 19-3-1403, MCA 1991; redes. 19-2-903 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 99, L. 2001; amd. Sec. 7, Ch. 329, L. 2005; amd. Sec. 4, Ch. 248, L. 2015; amd. Sec. 5, Ch. 195, L. 2017.

19-2-904. Withholding of group insurance premium from retirement benefit. (1) A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for group insurance withheld by the retirement system and paid directly by the system to the sponsoring employer. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of the former employer. Withholding may not be made for any retiree covered by an individual insurance policy.

(2) Following the death of a retiree who elected withholding of premiums under subsection (1), the retiree's contingent annuitant may elect to have the contingent annuitant's monthly premium for group insurance withheld by the retirement system and paid directly by the system to the sponsoring employer. In order to qualify for this withholding, the contingent annuitant must be covered by the same group insurance plan that covered the retiree in accordance with subsection (1).

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1; Sec. 19-3-1404, MCA 1991; redes. 19-2-904 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 232, Ch. 56, L. 2009; amd. Sec. 5, Ch. 248, L. 2015; amd. Sec. 6, Ch. 195, L. 2017.

Cross-References

Payments to volunteer fire companies maintaining supplemental insurance, 19-17-205.

Police retirement — local funds — withholding of group insurance premium, 19-19-505.

Group life insurance for public employees authorized, 33-20-1104.

19-2-905. Payments under workers' compensation. All payments provided for in this chapter, except as otherwise provided, are in addition to any other benefits provided for under the Workers' Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625; amd. Sec. 33, Ch. 265, L. 1993; Sec. 19-7-103, MCA 1991; redes. 19-2-905 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Workers' compensation, Title 39, ch. 71.

19-2-906. Limitations on disability or survivorship benefits. If the board determines that the disability or death of a member of a defined benefit plan is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887; amd. Sec. 34, Ch. 265, L. 1993; Sec. 19-9-1004, MCA 1991; redes. 19-2-906 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 19, Ch. 471, L. 1999.

19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(5), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments unless the family law order specifies that the alternate payee is not entitled to benefit adjustments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee's portion must be totally disbursed to the alternate payee as soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. Unless a family law order specifies the alternate payee's rights and interests revert to the participant upon the alternate payee's death, the alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance or by designation of a beneficiary.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

History: En. Sec. 1, Ch. 259, L. 1993; amd. Sec. 1, Ch. 111, L. 1995; amd. Sec. 11, Ch. 370, L. 1997; amd. Sec. 20, Ch. 471, L. 1999; amd. Sec. 15, Ch. 99, L. 2001; amd. Sec. 4, Ch. 490, L. 2001; amd. Sec. 14, Ch. 429, L. 2003; amd. Sec. 8, Ch. 329, L. 2005; amd. Sec. 3, Ch. 128, L. 2007; amd. Sec. 5, Ch. 284, L. 2009; amd. Sec. 7, Ch. 178, L. 2013; amd. Sec. 7, Ch. 195, L. 2017; amd. Sec. 1, Ch. 172, L. 2021.

19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of employment or, if requested by the member in writing, on the first day of a later month.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsections (1) and (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) If a disabled member continues with a purchase of service or chooses to purchase service following termination of employment, the member's disability benefit may not commence until the service purchase is completed.

(4) If a member begins receiving retirement benefits payments later than when the member is initially eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 does not commence until January 1 of the year after the year in which the member has received a monthly retirement benefit payment in each of the year's 12 months. The guaranteed annual benefit adjustment may not be paid retroactively.

(5) A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit if the designated beneficiary is a natural person and notifies the board of the designated beneficiary's election in writing within 90 days after the designated beneficiary receives notice that the designated beneficiary is eligible to receive a death payment. Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(6) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(7) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.

History: **En. Sec. 3, Ch. 370, L. 1997; amd. Sec. 13, Ch. 58, L. 1999; amd. Sec. 21, Ch. 471, L. 1999; amd. Sec. 16, Ch. 99, L. 2001; amd. Sec. 15, Ch. 429, L. 2003; amd. Sec. 9, Ch. 329, L. 2005; amd. Sec. 4, Ch. 128, L. 2007; amd. Sec. 7, Ch. 283, L. 2009; amd. Sec. 12, Ch. 99, L. 2011; amd. Sec. 6, Ch. 248, L. 2015; amd. Sec. 2, Ch. 172, L. 2021; amd. Sec. 7, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-1046 through 40-5-1051.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders.

History: En. Sec. 14, Ch. 552, L. 1997; amd. Sec. 22, Ch. 471, L. 1999; amd. Sec. 17, Ch. 99, L. 2001; amd. Sec. 5, Ch. 490, L. 2001; amd. Sec. 16, Ch. 429, L. 2003; amd. Sec. 10, Ch. 329, L. 2005; amd. Sec. 5, Ch. 128, L. 2007.

Part 10
Special Provisions

19-2-1001. Maximum contribution and benefit limitations. (1) (a) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code, 26 U.S.C. 415.

(b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

(i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;

(ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;

(iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and

(iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d).

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

(i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

(ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).

(c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).

(5) For purposes of subsection (4), the term "permissive service credit" means service credit:

(a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;

(b) that the plan member has not received under the plan;

(c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and

(d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

(6) A retirement system or plan fails to meet the requirements of subsection (4) if:

(a) more than 5 years of nonqualified service credit are taken into account; or

(b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.

(7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

(b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) service as an employee of an association of employees who are described in subsection (7)(a); or

(d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.

(8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.

(10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.

(b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.

(11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the calendar year beginning each January 1 and ending December 31.

(12) (a) "Salary", for the purposes of determining compliance with section 415 of the Internal Revenue Code, 26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:

(i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and

(ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of section 125, 403(b), or 457 of the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.

(b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).

(c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in a reasonably equivalent manner.

(13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

(a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit to the extent required by a reasonable interpretation of 26 CFR 1.415-3(c).

(b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

(i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and

(iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.

(c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.

(d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

(ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

(I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B); or

(B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

(I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;

(II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B); or

(III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the rate in effect for the month prior to retirement or, on or after January 1, 2009, the rate in effect for the first day of the plan year with a 1-year stabilization period and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December

31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B), divided by 1.05.

(iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B).

History: **En. Sec. 1, Ch. 14, L. 1987; amd. Sec. 35, Ch. 265, L. 1993; Sec. 19-3-107, MCA 1991; redes. 19-2-1001 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 58, L. 1999; amd. Sec. 31, Ch. 7, L. 2001; amd. Sec. 6, Ch. 490, L. 2001; amd. Sec. 6, Ch. 284, L. 2009; amd. Sec. 3, Ch. 240, L. 2013; amd. Sec. 2, Ch. 140, L. 2015.**

19-2-1002. Termination of plan. (1) Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

(2) A plan member is 100% vested in the member's accumulated contributions at all times.

(3) At any time prior to satisfaction of all liabilities to members and their beneficiaries under the retirement system or plan, any part of a member's accumulated contributions may not be used for or diverted to purposes other than the exclusive benefit of members and their beneficiaries.

History: **En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8); amd. Sec. 36, Ch. 265, L. 1993; Sec. 19-3-606, MCA 1991; redes. 19-2-1002 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 24, Ch. 471, L. 1999; amd. Sec. 7, Ch. 490, L. 2001; amd. Sec. 7, Ch. 284, L. 2009.**

Cross-References

Teachers' retirement — vesting of retirement allowances upon termination of system, 19-20-504.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may, in its discretion, transfer the accumulated contributions of a nonvested member of a defined benefit system or plan to the pension trust fund of the system or plan in which the member is participating if the member has not participated in the system or plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.

History: **En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907; amd. Sec. 37, Ch. 265, L. 1993; Sec. 19-3-604, MCA 1991; redes. 19-2-1003 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 25, Ch. 471, L. 1999; amd. Sec. 8, Ch. 490, L. 2001.**

Cross-References

Teachers' retirement — transfer of dormant savings account, 19-20-503.

19-2-1004. Exemption from taxes and legal process. (1) Except as provided in 19-2-907, 19-2-909, and subsection (2) of this section, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

(a) subject to execution, garnishment, attachment, or any other process;

(b) subject to county or municipal taxes except for a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(c) assignable except as specifically provided in this chapter.

(2) The right of a person to any benefit or payment from a retirement system or plan and the money in the system's or plan's pension trust fund associated with that benefit or payment is subject, once the person is entitled to distribution of the benefit or payment, to:

(a) a United States tax lien or levy for past-due taxes; and

(b) execution, garnishment, attachment, levy, or other process related to the collection of criminal fines and orders of restitution imposed under federal law as provided for in 18 U.S.C. 3613.

History: **En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502; amd. Sec. 3, Ch. 464, L. 1985; amd. Sec. 6, Ch. 823, L. 1991; amd. Sec. 2, Ch. 259, L. 1993; amd. Sec. 38, Ch. 265, L. 1993; Sec. 19-3-105, MCA 1991; redes. 19-2-1004 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 552, L. 1997; amd. Sec. 9, Ch. 490, L. 2001; amd. Sec. 2, Ch. 382, L. 2009; amd. Sec. 8, Ch. 195, L. 2017; amd. Sec. 42, Ch. 503, L. 2021.**

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.

Firefighters' retirement — protection of benefits from legal process — nonassignability, 19-18-612.

Police retirement — local funds — protection of benefits from legal process, 19-19-504.
Teachers' retirement — exemption from taxation and legal process, 19-20-706.
University System retirement program — exemption from taxation, legal process, and assessments, 19-21-212.
Garnishment — earnings of judgment debtor, 25-13-614.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-2-1005. Compensation limit. (1) A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

(2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, when calculating the highest average compensation or final average compensation for a member with at least the applicable 48 or 72 months of service credit, a retirement system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation of the member's highest average compensation or final average compensation:

(i) for the first year included in the calculation, any compensation that is greater than 110% of the compensation paid to the member in the previous year; and

(ii) for each subsequent year included in the calculation, any compensation that is greater than 110% of the compensation included in the calculation for the previous year.

(b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the member's total months of service credit and added to each month's compensation included in the member's highest average compensation or final average compensation as limited under subsection (2)(a).

History: **En. Sec. 39, Ch. 265, L. 1993; amd. Sec. 26, Ch. 471, L. 1999; amd. Sec. 10, Ch. 490, L. 2001; amd. Sec. 8, Ch. 284, L. 2009; amd. Sec. 2, Ch. 386, L. 2013; amd. Sec. 4, Ch. 400, L. 2023; amd. Sec. 8, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-2-1006. Use of forfeitures. A retirement system or plan subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the cost of administering a retirement system or plan subject to this chapter.

History: **En. Sec. 40, Ch. 265, L. 1993; amd. Secs. 15, 46(3), Ch. 58, L. 1999; amd. Sec. 27, Ch. 471, L. 1999; amd. Sec. 11, Ch. 490, L. 2001.**

19-2-1007. Required distributions. The benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) (a) Benefits must begin by April 1 of the calendar year following the later of:

(i) the calendar year in which the member reaches:

(A) 70½ years of age if the member was born before July 1, 1949;

(B) 72 years of age if the member was born after June 30, 1949;

(C) 73 years of age if the member was born after December 31, 1950, and turns 73 before 2033; or

(D) 75 years of age if the member turns 74 after 2032; or

(ii) the calendar year following the calendar year in which the member terminates employment.

(b) If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which benefits must begin under subsection (1)(a), the board shall begin distribution of the benefits as required by the retirement system or plan to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in a retirement system or plan must be distributed over the life of the member or the lives of the member and a designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(4) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

History: En. Sec. 41, Ch. 265, L. 1993; amd. Sec. 16, Ch. 58, L. 1999; amd. Sec. 28, Ch. 471, L. 1999; amd. Sec. 12, Ch. 490, L. 2001; amd. Sec. 3, Ch. 172, L. 2021; amd. Sec. 9, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-2-1008. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508; Sec. 19-3-106, MCA 1991; redes. 19-2-1008 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Budget Act, Title 17, ch. 7, part 1.

19-2-1009. Penalty for fraud. A person who knowingly makes a false statement or who knowingly falsifies or permits to be falsified any record of a retirement system in an attempt to defraud the system is guilty of a misdemeanor punishable by a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part); amd. Sec. 42, Ch. 265, L. 1993; Sec. 19-5-104, MCA 1991; redes. 19-2-1009 by Sec. 238, Ch. 265, L. 1993.

Cross-References

Teachers' retirement — penalty for fraud, 19-20-105.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, policies, and plan documents adopted by the board.

(3) The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 370, L. 1997; amd. Sec. 17, Ch. 58, L. 1999; amd. Sec. 17, Ch. 429, L. 2003.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-2-1011. Limitations on eligible rollover distributions. (1) An eligible rollover distribution may not include:

(a) any distribution that is one of a series of substantially equal periodic payments made at least annually for:

(i) the life or the life expectancy of the distributee;

(ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or

(iii) a specified period of 10 years or more;

(b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9);

(c) the portion of any distribution that is not includable in gross income; or

(d) any other distribution that is reasonably expected to total less than $200 during the year.

(2) (a) Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, that portion may be transferred only to:

(i) an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, 26 U.S.C. 408(a) or (b);

(ii) a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(iii) a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(iv) on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a); or

(v) an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b).

(b) The plans described in subsections (2)(a)(ii), (2)(a)(iv), and (2)(a)(v) must separately account for amounts that are transferred and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable.

History: En. Sec. 9, Ch. 284, L. 2009; amd. Sec. 4, Ch. 240, L. 2013.

19-2-1012 reserved.

19-2-1013. Compliance with federal restrictions on interest rate crediting. Interest credited on any refund of accumulated member contributions under a defined benefit plan subject to Title 19, chapter 2, must comply with any applicable provisions of the federal Age Discrimination in Employment Act, Public Law 90-202, and any applicable U.S. treasury regulations establishing market rates of return for purposes of complying with that federal act.

History: En. Sec. 10, Ch. 284, L. 2009.

19-2-1014. Compliance with federal laws regarding service in uniformed services. (1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified service in the uniformed services as defined in 38 U.S.C. 4303 and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment. In any event, a deceased member's period of qualified service in the uniformed services must be counted for vesting purposes.

(2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified service in the uniformed services as defined in 38 U.S.C. 4303 and to the extent permitted by section 414(u)(9) of the Internal Revenue Code, 26 U.S.C. 414(u)(9), the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment.

History: En. Sec. 24, Ch. 284, L. 2009; amd. Sec. 5, Ch. 240, L. 2013; amd. Sec. 3, Ch. 140, L. 2015.

19-2-1015. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

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19-2-1101. Repealed. Sec. 8, Ch. 62, L. 2001; sec. 130, Ch. 99, L. 2001.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 20, Ch. 562, L. 1999.

19-2-1102. Repealed. Sec. 130, Ch. 99, L. 2001.

History: En. Sec. 40, Ch. 471, L. 1999.

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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19-3-2143. Implementation.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Social Security, Title 19, ch. 1.
The Public Employees' Retirement Act, Title 19, ch. 2.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-102. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.

19-3-103. Retirement system created — system to consist of two plans. (1) A defined benefit retirement plan is created and established to become effective July 1, 1945.

(2) A defined contribution plan is established as provided in part 21 of this chapter.

(3) The public employees' retirement system consists of the defined benefit plan and the defined contribution plan. Each plan within the system is governed by the applicable provisions of chapter 2 and this chapter.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502; amd. Sec. 43, Ch. 265, L. 1993; amd. Sec. 29, Ch. 471, L. 1999.

Cross-References

Social Security — retirement systems to be considered separate, 19-1-104.

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-3-104. Renumbered 19-2-303. Sec. 238, Ch. 265, L. 1993.

19-3-105. Renumbered 19-2-1004. Sec. 238, Ch. 265, L. 1993.

19-3-106. Renumbered 19-2-1008. Sec. 238, Ch. 265, L. 1993.

19-3-107. Renumbered 19-2-1001. Sec. 238, Ch. 265, L. 1993.

19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(6)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704;

(v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment;

(vi) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay;

(vii) remuneration paid to a member to reimburse the member for what would normally be the employer's costs of doing business, such as for workstation equipment or telecom services to facilitate telework; or

(viii) per diems, maintenance, allowances, expenses, or volunteer stipends.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means:

(i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

(b) Lump-sum payments for compensatory leave, sick leave, banked holiday time, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103.

History: **En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 18, Ch. 58, L. 1999; amd. Sec. 30, Ch. 471, L. 1999; amd. Sec. 18, Ch. 99, L. 2001; amd. Sec. 2, Ch. 149, L. 2001; amd. Sec. 18, Ch. 429, L. 2003; amd. Sec. 10, Ch. 602, L. 2003; amd. Sec. 11, Ch. 329, L. 2005; amd. Sec. 13, Ch. 99, L. 2011; amd. Sec. 1, Ch. 369, L. 2011; amd. Sec. 3, Ch. 386, L. 2013; amd. Sec. 9, Ch. 195, L. 2017; amd. Sec. 5, Ch. 400, L. 2023; amd. Sec. 10, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-3-109. Public employees' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the public employees' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: **En. Sec. 1, Ch. 2, L. 2023.**

19-3-110 reserved.

19-3-111. Exemption for certain university temporary employees — "temporary employee" defined. (1) This chapter does not apply to a temporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

History: **En. Sec. 2, Ch. 121, L. 1995.**

19-3-112. Education fund established — allocation of employer contributions — educational program requirements. (1) (a) The board shall establish an education fund to be used to educate and inform system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational services and communication services established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of the compensation paid to all of the employer's employees who are members of the system must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational services must provide system members with impartial and balanced information about plan choices, benefits, and features. The services must be provided in a variety of formats. Plan comparisons must, to the greatest extent possible, be based upon historical rates of return on investments or benefits available in each retirement plan.

(b) If educational services are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the services are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide the educational program provided for in subsection (3) may not be the same entity contracted to provide other services for the defined contribution plan or the university system retirement program.

(3) The board shall offer an ongoing transfer educational program to provide new system members with information necessary to make informed plan choice decisions. The program must include but is not limited to information on:

(a) determining the amount of money available to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the rate of return from investments in the defined contribution plan that must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, assuming the same time period in each plan;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

(f) determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;

(g) use of supplemental retirement savings programs to enhance retirement income;

(h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(i) payout options available in each of the retirement plans.

(4) Ongoing educational services and communication services must be provided after members have made their initial retirement plan choice. These services must continually provide members with information about their chosen plan, alternatives within their chosen plan, and decisions necessary for retirement preparation. The services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan.

History: En. Sec. 41, Ch. 471, L. 1999; amd. Sec. 12, Ch. 329, L. 2005; amd. Sec. 2, Ch. 282, L. 2013.

Cross-References

Deferred compensation, Title 19, ch. 50.

19-3-113 through 19-3-116 reserved.

19-3-117. Board report required. As soon as possible after the completion of each annual actuarial valuation for the public employees' retirement system, the board shall have its actuary present a detailed actuarial report in accordance with 5-11-210 to the legislative finance committee and to the state administration and veterans' affairs interim committee. The actuarial report must provide a trend analysis of the system's progress toward 100% funding. The reporting requirement may be addressed in reports provided in accordance with 19-2-405.

History: En. Sec. 7, Ch. 390, L. 2013; amd. Sec. 44, Ch. 261, L. 2021.

Part 2
Extension of Coverage by Local Government Employers

Part Cross-References

Contracts, Title 28, ch. 2, 3.

19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for:

(i) the cost of the actuarial valuation to determine the terminating agency's liabilities to the retirement system; and

(ii) any excess accrued liabilities not previously funded by the terminating agency.

History: **En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981; amd. Sec. 45, Ch. 265, L. 1993; amd. Sec. 31, Ch. 471, L. 1999; amd. Sec. 22, Ch. 562, L. 1999; amd. Sec. 13, Ch. 329, L. 2005; amd. Sec. 8, Ch. 283, L. 2009; amd. Sec. 10, Ch. 195, L. 2017.**

Cross-References

Power of hospital district — pension benefits, 7-34-2122.

Vehicle Equipment Safety Commission — retirement benefits for employees, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-202. Request by individual employee for employer to participate. Any employee who has, for a continuous period of at least 2 years, been an employee of a municipal corporation, county, or other public agency of this state that is not a contracting employer may advise the legislative body of the employer, in writing, that the employee wishes to participate in the retirement system. Within 30 days after receipt of the written request, the legislative body shall adopt the resolution of intention and take action as provided for in 19-3-201.

History: **En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702; amd. Sec. 233, Ch. 56, L. 2009.**

19-3-203. Conversion of local or state retirement plan. (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), must be limited to active members of the local system, and approval requires an affirmative vote of two-thirds of the employees.

(2) Subject to the applicable provisions of this chapter, active members of the local system shall become members of either the defined benefit plan or the defined contribution plan of the retirement system and are no longer members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703; amd. Sec. 46, Ch. 265, L. 1993; amd. Sec. 32, Ch. 471, L. 1999.

Cross-References

Social Security — declaration of policy, 19-1-101.
Employer contributions, 19-2-506.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or designated beneficiary of the retirement system because of the participation of the contracting employer may maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979; amd. Sec. 47, Ch. 265, L. 1993.

Cross-References

Property tax limitation, Title 15, ch. 10, part 4.
Employer contributions, 19-2-506.
Firefighters' unified retirement — taxing authority of employers, 19-13-214.

Part 3
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.

Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-3-301. Renumbered 19-2-401. Sec. 238, Ch. 265, L. 1993.

19-3-302. Renumbered 19-2-402. Sec. 238, Ch. 265, L. 1993.

19-3-303. Repealed. Sec. 4, Ch. 254, L. 1981.
History: **En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).**

19-3-304. Renumbered 19-2-403. Sec. 238, Ch. 265, L. 1993.

19-3-305. Renumbered 19-2-405. Sec. 238, Ch. 265, L. 1993.

19-3-306. Renumbered 19-2-407. Sec. 238, Ch. 265, L. 1993.

19-3-307. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.**

19-3-308. Terminated. Sec. 7, Ch. 328, L. 1987.
History: **En. Sec. 3, Ch. 328, L. 1987.**

19-3-309 through 19-3-314 reserved.

19-3-315. Member's contribution to be deducted. (1) (a) Except as provided in subsection (2), each member's contribution is 7.9% of the member's compensation.

(b) The board shall annually review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.

(3) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) or (2) for service rendered after June 30, 1985.

(5) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: **En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902; amd. Sec. 4, Ch. 464, L. 1985; amd. Sec. 1, Ch. 558, L. 1989; amd. Sec. 52, Ch. 265, L. 1993; Sec. 19-3-701, MCA 1991; redes. 19-3-315 by Code Commissioner, 1993; amd. Sec. 8, Ch. 287, L. 1997; amd. Sec. 33, Ch. 471, L. 1999; amd. Sec. 11, Ch. 284, L. 2009; amd. Sec. 2, Ch. 369, L. 2011; amd. Sec. 3, Ch. 390, L. 2013.**

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) (a) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (3)(b) of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.

(b) For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (3)(a) is 2.27%. For fiscal years beginning after June 30, 2027, there is a 0.1% increase each fiscal year through the fiscal year ending June 30, 2047. For fiscal years beginning after June 30, 2047, the percentage of compensation to be contributed under subsection (3)(a) is 4.27%.

(4) (a) The board shall annually review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on January 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (4)(b) and reducing the employee contribution pursuant to 19-3-315(2) would not cause the amortization period to exceed 25 years.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983; amd. Sec. 2, Ch. 558, L. 1989; amd. Sec. 53, Ch. 265, L. 1993; Sec. 19-3-801, MCA 1991; redes. 19-3-316 by Code Commissioner, 1993; amd. Sec. 9, Ch. 287, L. 1997; amd. Sec. 50, Ch. 51, L. 1999; amd. Sec. 34, Ch. 471, L. 1999; amd. Sec. 14, Ch. 329, L. 2005; amd. Sec. 1, Ch. 371, L. 2007; amd. Sec. 9, Ch. 283, L. 2009; amd. Sec. 4, Ch. 390, L. 2013; amd. Sec. 29, Ch. 775, L. 2025.

Compiler's Comments

2025 Amendments — Coordination: See 2025 Session Law for amendment made by sec. 29, Ch. 775, L. 2025. Amendment effective June 19, 2025.

The amendment to this section made by sec. 1, Ch. 546, L. 2025, was rendered void by sec. 44, Ch. 775, L, 2025, a coordination section.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.
Judges' retirement — state's contributions, 19-5-404.
Highway patrol retirement — state's contribution, 19-6-404.
Sheriffs' retirement — employer contributions, 19-7-404.
Game wardens' and peace officers' retirement — state's contribution, 19-8-504.
Police retirement — statewide plan — employer contribution, 19-9-703.
Firefighters' unified retirement — employer contribution, 19-13-605.
Police retirement — local funds — city's contribution, 19-19-301.
Teachers' retirement — pension accumulation fund — employer contribution, 19-20-605.

19-3-317. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2); Sec. 19-3-803, MCA 1991; redes. 19-3-317 by Code Commissioner, 1993.

19-3-318. Credit of contributions made after member becomes inactive. Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403(6), must be credited to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c); amd. Sec. 54, Ch. 265, L. 1993; Sec. 19-3-405, MCA 1991; redes. 19-3-318 by Code Commissioner, 1993; amd. Sec. 19, Ch. 58, L. 1999; amd. Sec. 15, Ch. 329, L. 2005; amd. Sec. 6, Ch. 400, L. 2023.

19-3-319. State contributions for local government and school district employers. (1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those employees properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.27% of the compensation paid to all employees of school districts except for those employees properly excluded from membership.

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 4, Ch. 287, L. 1997; amd. Sec. 39(1)(a), Ch. 532, L. 1997; amd. Sec. 23, Ch. 562, L. 1999; amd. Sec. 16, Ch. 329, L. 2005; amd. Sec. 2, Ch. 371, L. 2007; amd. Sec. 14, Ch. 99, L. 2011.

Cross-References

Fund structure, 17-2-102.

19-3-320. Supplemental state contribution — appropriation. (1) (a) For the fiscal year beginning July 1, 2017, the state shall contribute $31.386 million and for the fiscal year beginning July 1, 2018, the state shall contribute $31.958 million from the general fund to the public employees' retirement system pension trust as a supplemental contribution to the public employees' retirement system.

(b) Starting in the fiscal year beginning July 1, 2019, the state shall contribute from the general fund to the public employees' retirement system pension trust 101% of the contribution from the previous years as a supplemental contribution to the public employees' retirement system.

(c) The 69th legislature shall review the performance of subsection (1)(b) and make recommendations for adjustments as needed.

(2) This contribution is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund.

History: En. Sec. 3, Ch. 351, L. 2017.

Part 4
Eligibility, Membership, and Vesting

Part Cross-References

Workers' Compensation Judge, 3-9-101.
Legislators — continued participation, 5-2-304.
Termination of membership and refunds, Title 19, ch. 2, part 6.
Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.
Community college district employees — applicability, 20-15-106.
Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.
Criminal investigation agents — coverage, 44-2-114.

19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting the employer's employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district, the Montana school for the deaf and blind, or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601; amd. Sec. 1, Ch. 162, L. 1991; amd. Sec. 49, Ch. 265, L. 1993; amd. Sec. 12, Ch. 370, L. 1997; amd. Sec. 35, Ch. 471, L. 1999; amd. Secs. 24, 99(1)(d), Ch. 562, L. 1999; amd. Sec. 19, Ch. 429, L. 2003; amd. Sec. 17, Ch. 329, L. 2005; amd. Sec. 6, Ch. 128, L. 2007; amd. Sec. 15, Ch. 99, L. 2011.

19-3-402. Federally subsidized employees eligible. A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

19-3-403. Exclusions from membership. The following persons may not become members of the retirement system and, except as provided in subsection (9), may not later purchase previous service under 19-3-505:

(1) inmates or residents of state institutions or correctional institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) volunteers;

(5) student interns, except that a student intern who later becomes an active member by otherwise becoming an employee may, after becoming an active member, affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing to become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

(6) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (6), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(7) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(8) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(9) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

(10) county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983; amd. Sec. 1, Ch. 303, L. 1985; amd. Sec. 1, Ch. 275, L. 1991; amd. Sec. 51, Ch. 265, L. 1993; amd. Sec. 9, Ch. 308, L. 1995; amd. Sec. 9, Ch. 412, L. 1995; amd. Sec. 25, Ch. 562, L. 1999; amd. Sec. 19, Ch. 99, L. 2001; amd. Sec. 20, Ch. 429, L. 2003; amd. Sec. 18, Ch. 329, L. 2005; amd. Sec. 10, Ch. 283, L. 2009; amd. Sec. 16, Ch. 99, L. 2011; amd. Sec. 11, Ch. 195, L. 2017; amd. Sec. 7, Ch. 400, L. 2023.

Cross-References

Workers' Compensation Judge, 3-9-101.

Power of hospital district to provide pension benefits, 7-34-2122.

Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

Vehicle Equipment Safety Commission — retirement benefits for employees, 61-2-205 (61-2-201, Art. III(6), Vehicle Equipment Safety Compact).

19-3-404. Renumbered 19-3-1211. Code Commissioner, 1993.

19-3-405. Renumbered 19-3-318. Code Commissioner, 1993.

19-3-406. Renumbered 19-2-601. Sec. 238, Ch. 265, L. 1993.

19-3-407 through 19-3-410 reserved.

19-3-411. Eligible employees. Subject to 19-3-402, 19-3-403, 19-3-412, and 19-3-413, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

History: En. Sec. 48, Ch. 265, L. 1993; amd. Sec. 7, Ch. 248, L. 2015.

19-3-412. Optional membership — employees not in elected office. (1) Except as provided in subsection (2), the following employees in covered positions that are not elected offices shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(b) employees directly appointed by the governor;

(c) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(d) the chief administrative officer of any city or county; and

(e) employees of county hospitals or rest homes.

(2) (a) An employee who is an active or inactive member at the time of employment is not eligible to make an election under subsection (1). Upon employment in the position, an employee who was an active member remains an active member for all covered employment and an employee who was an inactive member shall become an active member.

(b) A person who was a retired member before employment in a position for which membership is optional under subsection (1) is not eligible to make an election under subsection (1) and is subject to the provisions of Title 19, chapter 3, part 11.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 90 days after the commencement of the employee's employment.

(d) The employer shall inform the employee of the option to elect membership and retain a copy of the employee's written application.

(4) Failure to inform an employee in a position covered under subsection (1) of the employee's option to elect membership must be treated as a correction of a reporting error under 19-2-506(4). An employee who elects membership in the defined benefit plan following discovery of an omission to be informed of the optional election may choose to purchase the retroactive service under 19-3-505, and the employer is obligated to pay the employer contributions as well as accrued interest in both the employer and employee contributions.

(5) If the employee fails to file with the board the written application required under subsection (1) within the time allowed in subsection (3), the failure must be considered an election to decline membership.

(6) Except as provided in subsection (7), an employee who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(7) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(8) An employee who has made an election under this section may not make a new or different election under this section in any circumstance unless the employee has been terminated from employment in all optional membership positions for at least 30 days.

(9) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership under this section.

History: En. Sec. 50, Ch. 265, L. 1993; amd. Sec. 1, Ch. 208, L. 1997; amd. Sec. 13, Ch. 370, L. 1997; amd. Sec. 51, Ch. 51, L. 1999; amd. Sec. 20, Ch. 58, L. 1999; amd. Sec. 26, Ch. 562, L. 1999; amd. Sec. 20, Ch. 99, L. 2001; amd. Sec. 1, Ch. 285, L. 2001; amd. Sec. 1, Ch. 357, L. 2001; amd. Sec. 1, Ch. 402, L. 2003; amd. Sec. 21, Ch. 429, L. 2003; amd. Sec. 19, Ch. 329, L. 2005; amd. Sec. 1, Ch. 41, L. 2007; amd. Sec. 7, Ch. 128, L. 2007; amd. Sec. 2, Ch. 334, L. 2007; amd. Sec. 12, Ch. 284, L. 2009; amd. Sec. 17, Ch. 99, L. 2011; amd. Sec. 8, Ch. 178, L. 2013; amd. Sec. 8, Ch. 248, L. 2015; amd. Sec. 11, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-3-413. Optional membership — elected officials. (1) (a) Except as provided in 5-2-304, 19-20-302(1)(g) and (2), and subsection (2) of this section, a person who is elected or appointed to an elected office and paid a salary or wage by an employer shall elect either to become an active member of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3).

(b) If the elected official is a retired member, the elected official may make an election under this section to become an active member or to decline membership and remain a retired member with no limitation on the number of hours worked or wages earned in the elected office.

(2) An elected official who works more than 960 hours in a fiscal year in that elected office and who was an active or inactive member before becoming an elected official is not eligible to make an election under subsection (1). An active member remains an active member for all covered employment, and an inactive member shall become an active member.

(3) (a) The board shall prescribe the form of the written application required pursuant to this section and provide the form to each employer.

(b) An election form must be completed and returned to the board within 90 days after the elected official assumes office. Failure to file the written application form within 90 days is considered an election to decline membership.

(c) The employer shall retain a copy of the elected official's written application.

(4) Except as provided in subsection (5), an elected official who declines optional membership may not receive membership service or service credit for any employment in the position for which membership was declined.

(5) An elected official who declined optional membership under this section but who later becomes a member may purchase service credit for the period of time the person was employed in the optional position and declined membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(6) An elected official who has made an election under this section and who is reelected or reappointed to the same office is not eligible to make a new election.

(7) For purposes of this section, "elected official" means all persons covered by subsection (1)(a).

History: **En. Sec. 9, Ch. 248, L. 2015; amd. Sec. 12, Ch. 195, L. 2017.**

Part 5
Service Credit

Part Cross-References

Service credit and additional contributions, Title 19, ch. 2, part 7.

Teachers' retirement — creditable service, Title 19, ch. 20, part 4.

19-3-501. Absence not included in service. Except as otherwise provided in this part, time during which a member is absent from service may not be included in the calculation of service credit.

History: **En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604; amd. Sec. 55, Ch. 265, L. 1993.**

Cross-References

School district employee's official vacation absence counted as service, 19-3-401.

19-3-502. Renumbered 19-2-705. Sec. 238, Ch. 265, L. 1993.

19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: **En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1; amd. Sec. 5, Ch. 609, L. 1989; amd. Sec. 56, Ch. 265, L. 1993; amd. Sec. 10, Ch. 287, L. 1997; amd. Sec. 21, Ch. 58, L. 1999; amd. Sec. 1, Ch. 494, L. 1999; amd. Sec. 21, Ch. 99, L. 2001; amd. Sec. 1, Ch. 26, L. 2003; amd. Sec. 1, Ch. 289, L. 2003; amd. Secs. 22, 122(1), Ch. 429, L. 2003; amd. Sec. 4, Ch. 172, L. 2021.**

Cross-References

Veteran defined, 10-2-101.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — election to qualify previous military service, 19-19-406.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credit for this period unless the member files with the board a written notice of the member's intent to purchase the time of absence and complies with subsection (2), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related illness or injury entitling the member to workers' compensation payments may, upon the member's return to service or upon termination of employment if the member cannot return to service due to the illness or injury, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the absence. The amount of contributions owed will be based on the member's compensation at the commencement of the member's absence, plus regular interest accruing 1 year from the date after the member returns to service or terminates employment to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) A member loses the right to contribute for:

(a) the entire absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602; or

(b) the period of time during which retirement benefits are received if the member retires during the absence.

History: **En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983; amd. Sec. 1, Ch. 103, L. 1987; amd. Sec. 57, Ch. 265, L. 1993; amd. Sec. 14, Ch. 370, L. 1997; amd. Sec. 22, Ch. 58, L. 1999; amd. Sec. 23, Ch. 429, L. 2003; amd. Sec. 11, Ch. 283, L. 2009.**

Cross-References

Teachers' retirement — creditable service for employment while on leave, 19-20-403.
Workers' compensation — injury defined, 39-71-119.
Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-3-505. *(Temporary)* **Purchase of previous employment with employer.** (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit and membership service. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay all contributions that the member would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment.

(c) The employer shall establish a policy as to the payment of retroactive employer contributions or retroactive employer contributions and regular interest and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment.

19-3-505. *(Effective July 1, 2026)* **Purchase of previous employment with employer.** (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit and membership service. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay all contributions that the member would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay interest at the actuarially assumed rate of return in effect at the time of the request.

(c) The employer shall establish a policy as to the payment of retroactive employer contributions or retroactive employer contributions and regular interest and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607; amd. Sec. 2, Ch. 103, L. 1987; amd. Sec. 58, Ch. 265, L. 1993; amd. Sec. 23, Ch. 58, L. 1999; amd. Sec. 27, Ch. 562, L. 1999; amd. Sec. 22, Ch. 99, L. 2001; amd. Sec. 24, Ch. 429, L. 2003; amd. Sec. 20, Ch. 329, L. 2005; amd. Sec. 12, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 477, L. 2025. Amendment effective July 1, 2026.

19-3-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

19-3-507. Repealed. Sec. 4, Ch. 290, L. 1983.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

19-3-508. Renumbered 19-2-703. Sec. 238, Ch. 265, L. 1993.

19-3-509. Repealed. Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 1, Ch. 145, L. 1981; amd. Sec. 3, Ch. 290, L. 1983: amd. Sec. 1, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 59, Ch. 265, L. 1993; amd. Sec. 10, Ch. 412, L. 1995; amd. Sec. 52, Ch. 51, L. 1999; amd. Sec. 28, Ch. 562, L. 1999; amd. Sec. 23, Ch. 99, L. 2001.

19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq., may purchase the federal employment as service credit in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation if the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: **En. Sec. 1, Ch. 261, L. 1981; amd. Sec. 60, Ch. 265, L. 1993; amd. Sec. 24, Ch. 99, L. 2001; amd. Sec. 25, Ch. 429, L. 2003; amd. Sec. 8, Ch. 128, L. 2007.**

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer employer contributions directly to the public employees' retirement system in an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system as follows:

(i) for a direct transfer of member contributions, at the interest rate credited by the teachers' retirement system to member accounts; or

(ii) for a redeposit of refunded member contributions, at the public employees' retirement system's actuarial assumed rate of return in effect at the time of redeposit.

(3) (a) The amount of service credit granted in subsection (1) must be equal to the service credit that had been on account with the teachers' retirement system.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) When an active member of the public employees' retirement system dies while also having service credit on account with the teachers' retirement system, the deceased member's designated beneficiary may apply to have the member's service transferred from the teachers' retirement system if all of the following requirements are met:

(a) the member had not previously retired under either retirement system;

(b) the member was not vested with either system at the time of death;

(c) the member's total creditable service following transfer would entitle the designated beneficiary to receive a survivor benefit from the public employees' retirement system in the form of a monthly benefit payable for the beneficiary's lifetime;

(d) at least one individual designated beneficiary will be electing a survivorship benefit;

(e) the designated beneficiary who is entitled to payment on behalf of the member is the same individual in each retirement system; and

(f) the transfer of service credit to the public employees' retirement system is upon a full withdrawal of the member's service credit from the teachers' retirement system.

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

History: En. Sec. 1, Ch. 290, L. 1983; amd. Sec. 1, Ch. 690, L. 1989; amd. Sec. 1, Ch. 64, L. 1991; amd. Sec. 61, Ch. 265, L. 1993; amd. Sec. 11, Ch. 412, L. 1995; amd. Sec. 15, Ch. 370, L. 1997; amd. Sec. 25, Ch. 99, L. 2001; amd. Sec. 26, Ch. 429, L. 2003; amd. Sec. 8, Ch. 400, L. 2023.

19-3-512. Purchase of service credit from other public retirement systems. (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase service credit for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service credit under this section. To purchase this service credit, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service credit in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service credit cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service credit, plus regular interest on that amount.

History: En. Sec. 1, Ch. 11, L. 1987; amd. Sec. 1, Ch. 196, L. 1989; amd. Sec. 62, Ch. 265, L. 1993; amd. Sec. 11, Ch. 287, L. 1997; amd. Sec. 24, Ch. 58, L. 1999; amd. Sec. 29, Ch. 562, L. 1999; amd. Sec. 26, Ch. 99, L. 2001; amd. Sec. 27, Ch. 429, L. 2003; amd. Sec. 9, Ch. 178, L. 2013.

19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904.

(4) Purchases of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906, if applicable.

History: En. Sec. 1, Ch. 73, L. 1989; amd. Sec. 17, Ch. 16, L. 1991; amd. Sec. 63, Ch. 265, L. 1993; amd. Sec. 12, Ch. 287, L. 1997; amd. Sec. 25, Ch. 58, L. 1999; amd. Sec. 2, Ch. 494, L. 1999; amd. Sec. 27, Ch. 99, L. 2001; amd. Sec. 28, Ch. 429, L. 2003; amd. Sec. 12, Ch. 283, L. 2009; amd. Sec. 18, Ch. 99, L. 2011; amd. Sec. 3, Ch. 369, L. 2011.

Cross-References

Service credit and additional contributions, Title 19, ch. 2, part 7.

19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, 19-3-513, and 19-3-515.

(2) A member who has purchased service credit under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service credit under 19-3-513 must receive credit for the full months of service credit purchased on or before January 1, 1990.

History: En. Secs. 28, 29, Ch. 99, L. 2001; amd. Sec. 2, Ch. 292, L. 2003; amd. Sec. 29, Ch. 429, L. 2003.

19-3-515. Purchase of federal volunteer service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase membership service and service credit for up to 5 years of the member's service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position as described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq.

(2) Purchase of membership service and service credit under this section is subject to the board's verification of the member's volunteer service.

(3) To purchase this membership service and service credit, the member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

History: En. Sec. 1, Ch. 292, L. 2003.

19-3-516 through 19-3-519 reserved.

19-3-520. Repealed. Sec. 44, Ch. 58, L. 1999.

History: En. Sec. 1, Ch. 71, L. 1989; amd. Sec. 64, Ch. 265, L. 1993; Sec. 19-3-907, MCA 1991; redes. 19-3-520 by Code Commissioner, 1993.

19-3-521. Service credit for legislative members. A member of the legislature of Montana must receive membership service and service credit for that portion of each year for which the member pays regular contributions.

History: En. Sec. 65, Ch. 265, L. 1993; amd. Sec. 30, Ch. 562, L. 1999; amd. Sec. 30, Ch. 429, L. 2003.

Cross-References

Legislators — continued participation, 5-2-304.

19-3-522. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 6
Financial Management
(Renumbered)

19-3-601. Renumbered 19-2-503. Sec. 238, Ch. 265, L. 1993.

19-3-602. Renumbered 19-2-504. Sec. 238, Ch. 265, L. 1993.

19-3-603. Renumbered 19-2-505. Sec. 238, Ch. 265, L. 1993.

19-3-604. Renumbered 19-2-1003. Sec. 238, Ch. 265, L. 1993.

19-3-605. Renumbered 19-2-507. Sec. 238, Ch. 265, L. 1993.

19-3-606. Renumbered 19-2-1002. Sec. 238, Ch. 265, L. 1993.

Part 7
Employee Contributions
(Renumbered)

19-3-701. Renumbered 19-3-315. Code Commissioner, 1993.

19-3-702. Renumbered 19-2-704. Sec. 238, Ch. 265, L. 1993.

19-3-703. Renumbered 19-2-602. Sec. 238, Ch. 265, L. 1993.

19-3-704. Renumbered 19-2-603. Sec. 238, Ch. 265, L. 1993.

Part 8
Employer Contributions
(Renumbered and Repealed)

19-3-801. Renumbered 19-3-316. Code Commissioner, 1993.

19-3-802. Renumbered 19-2-506. Sec. 238, Ch. 265, L. 1993.

19-3-803. Renumbered 19-3-317. Code Commissioner, 1993.

19-3-804. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973; R.C.M. 1947, 68-2507; amd. Sec. 2, Ch. 348, L. 1979; amd. Sec. 2, Ch. 138, L. 1991.

19-3-805. Renumbered 19-2-408. Sec. 238, Ch. 265, L. 1993.

Part 9
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-3-901. Eligibility for service retirement. (1) A member hired prior to July 1, 2011, who has:

(a) attained age 60 and has 5 years of membership service is eligible for service retirement;

(b) attained at least age 65 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service; or

(c) 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) A member hired on or after July 1, 2011, who has:

(a) attained age 65 and has 5 years of membership service is eligible for service retirement; or

(b) attained age 70 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service.

(3) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411:

(a) in each of the circumstances described in subsections (1)(a), (1)(b), and (2), the member is treated as having attained normal retirement age; and

(b) in each of the circumstances described in subsections (1) and (2), the member has a nonforfeitable right to the service retirement benefit accrued and payable under the provisions of this chapter, subject to the member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1); amd. Sec. 2, Ch. 162, L. 1991; amd. Sec. 66, Ch. 265, L. 1993; amd. Sec. 30, Ch. 99, L. 2001; amd. Sec. 19, Ch. 99, L. 2011; amd. Sec. 4, Ch. 369, L. 2011; amd. Sec. 6, Ch. 240, L. 2013.

19-3-902. Eligibility for early retirement. (1) A member hired prior to July 1, 2011, who:

(a) is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement; or

(b) has completed 25 years or more of membership service is eligible for early retirement.

(2) A member hired on or after July 1, 2011, who is not eligible for service retirement but has attained age 55 and has 5 years of membership service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981; amd. Sec. 67, Ch. 265, L. 1993; amd. Sec. 5, Ch. 369, L. 2011.

Cross-References

Sheriffs' retirement — early retirement option, 19-7-502.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-3-903. Repealed. Sec. 39, Ch. 370, L. 1997.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983; amd. Sec. 2, Ch. 196, L. 1989; amd. Sec. 68, Ch. 265, L. 1993.

19-3-904. Amount of service retirement benefit. (1) The monthly amount of service retirement benefit payable following retirement to a member hired before July 1, 2011, with:

(a) less than 25 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(b) 25 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(2) The monthly amount of service retirement benefit payable following retirement to a member hired on or after July 1, 2011, with:

(a) less than 10 years of membership service is the greater of 1.5% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3);

(b) 10 or more years but less than 30 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(c) 30 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(3) A member is entitled to receive the greater of:

(a) the benefit provided pursuant to subsection (1) or (2); or

(b) a monthly benefit that is the actuarial equivalent of the sum of:

(i) double the member's regular contributions and regular interest; and

(ii) any amounts paid by the member to purchase service credit and membership service as provided by law.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003; amd. Sec. 2, Ch. 73, L. 1989; amd. Sec. 3, Ch. 558, L. 1989; amd. Sec. 69, Ch. 265, L. 1993; amd. Sec. 31, Ch. 562, L. 1999; amd. Sec. 31, Ch. 99, L. 2001; amd. Sec. 1, Ch. 217, L. 2001; amd. Sec. 31, Ch. 429, L. 2003; amd. Sec. 6, Ch. 369, L. 2011; amd. Sec. 10, Ch. 248, L. 2015.

Cross-References

Judges' retirement — service retirement benefit, 19-5-502.
Highway patrol retirement — service retirement benefit, 19-6-502.
Sheriffs' retirement — service retirement benefit, 19-7-503.
Game wardens' and peace officers' retirement — service retirement benefit, 19-8-603.
Police retirement — statewide plan — amount of retirement benefit, 19-9-804.
Firefighters' unified retirement — amount of service retirement benefit, 19-13-704.
Volunteer Firefighters' Compensation Act — pension benefits, 19-17-404.
Firefighters' retirement — service pension, 19-18-602.
Police retirement — local funds — service retirement allowance, 19-19-501.
Teachers' retirement — allowance for superannuation retirement, 19-20-804.

19-3-905. Adjustment of benefit for certain members. The minimum retirement benefit payable to a vested member who has attained age 70 in service is an annuity of $40 per month.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004; amd. Sec. 3, Ch. 196, L. 1989; amd. Sec. 70, Ch. 265, L. 1993.

Cross-References

Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.
Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-3-906. Early retirement benefit. (1) (a) Until October 1, 2011, for a member hired prior to July 1, 2011, the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1).

(b) The early retirement benefit must be determined as prescribed in 19-3-904(1), with the exception that the benefit must be reduced as follows:

(i) by 0.5% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained age 60 or had the member completed 30 years of membership service; and

(ii) by 0.3% multiplied by the number of months in excess of the 60 months in subsection (1)(b)(i) but not to exceed 60 additional months by which the retirement date precedes the date on which the member would have retired had the member attained age 60 or had the member completed 30 years of membership service.

(2) Beginning October 1, 2011, for a member hired prior to July 1, 2011, the amount of retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1), with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(3) For a member hired on or after July 1, 2011, the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 65 pursuant to 19-3-904(2), with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(4) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981; amd. Sec. 60, Ch. 370, L. 1987; amd. Sec. 3, Ch. 73, L. 1989; amd. Sec. 71, Ch. 265, L. 1993; amd. Sec. 32, Ch. 429, L. 2003; amd. Sec. 13, Ch. 283, L. 2009; amd. Sec. 20, Ch. 99, L. 2011; amd. Sec. 7, Ch. 369, L. 2011.

Cross-References

Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — involuntary retirement benefit, 19-6-503.
Sheriffs' retirement — early retirement option, 19-7-502.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-3-907. Renumbered 19-3-520. Code Commissioner, 1993.

19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or who is involuntarily terminated from service because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated from service because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated from service, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination from service, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

History: En. Sec. 1, Ch. 567, L. 1993; amd. Sec. 127, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 66, L. 2001; amd. Sec. 33, Ch. 429, L. 2003; amd. Sec. 21, Ch. 329, L. 2005; amd. Sec. 10, Ch. 178, L. 2013.

19-3-909. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 10
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-3-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008.

(2) An active member who was hired prior to July 1, 2011, and is 60 years of age or older or was hired on or after July 1, 2011, and is 65 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the

provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual who became a member after February 24, 1991, and before July 1, 2011, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

(4) A member hired on or after July 1, 2011, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(4).

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983; amd. Sec. 56, Ch. 613, L. 1989; amd. Sec. 1, Ch. 49, L. 1991; amd. Sec. 72, Ch. 265, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 32, Ch. 99, L. 2001; amd. Sec. 2, Ch. 217, L. 2001; amd. Sec. 34, Ch. 429, L. 2003; amd. Sec. 22, Ch. 329, L. 2005; amd. Sec. 8, Ch. 369, L. 2011.**

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-3-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).**

19-3-1004. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).**

19-3-1005. Repealed. Sec. 35, Ch. 178, L. 2013.

History: **En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 73, Ch. 265, L. 1993; amd. Sec. 32, Ch. 562, L. 1999; amd. Sec. 33, Ch. 99, L. 2001; amd. Sec. 23, Ch. 329, L. 2005.**

19-3-1006. Repealed. Sec. 39, Ch. 370, L. 1997.

History: **En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 74, Ch. 265, L. 1993.**

19-3-1007. Benefit for duty-related disability. (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's highest average compensation.

(2) A retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977.

History: **En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103; amd. Sec. 55, Ch. 613, L. 1989; amd. Sec. 75, Ch. 265, L. 1993; amd. Sec. 34, Ch. 99, L. 2001.**

19-3-1008. Benefit for disability. (1) The monthly amount of the disability retirement benefit payable to a member under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(4) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(4) who has:

(a) more than 5 but less than 10 years of membership service is a retirement benefit equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(5) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104; amd. Sec. 4, Ch. 73, L. 1989; amd. Sec. 4, Ch. 558, L. 1989; amd. Sec. 2, Ch. 49, L. 1991; amd. Sec. 76, Ch. 265, L. 1993; amd. Sec. 35, Ch. 99, L. 2001; amd. Sec. 3, Ch. 217, L. 2001; amd. Sec. 35, Ch. 429, L. 2003; amd. Sec. 9, Ch. 369, L. 2011.

19-3-1009 through 19-3-1014 reserved.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: **En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201; amd. Sec. 1, Ch. 138, L. 1989; amd. Sec. 77, Ch. 265, L. 1993; Sec. 19-3-1102, MCA 1991; redes. 19-3-1015 by Code Commissioner, 1993; amd. Sec. 12, Ch. 412, L. 1995; amd. Sec. 17, Ch. 370, L. 1997; amd. Sec. 33, Ch. 562, L. 1999; amd. Sec. 36, Ch. 99, L. 2001; amd. Sec. 36, Ch. 429, L. 2003; amd. Sec. 24, Ch. 329, L. 2005; amd. Sec. 14, Ch. 283, L. 2009; amd. Sec. 9, Ch. 400, L. 2023.**

Cross-References

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-3-1016. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: **En. Sec. 40, Ch. 471, L. 1999.**

Part 11
Reemployment of Retired Members

Part Cross-References

Termination of membership and refunds, Title 19, ch. 2, part 6.

Reinstatement after withdrawal of contributions, 19-2-603.

19-3-1101. Renumbered 19-3-1501. Code Commissioner, 1993.

19-3-1102. Renumbered 19-3-1015. Code Commissioner, 1993.

19-3-1103. Disability benefit reduced by earnings. (1) (a) If the recipient of a disability retirement benefit is self-employed or employed in a position not covered by the retirement system, the recipient shall submit to the board an annual earnings statement, and any other documentation requested by the board, covering each month during which the recipient was self-employed or employed in the position.

(b) The amount of the recipient's retirement benefit must be reduced annually to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the highest average compensation at the time of the recipient's retirement.

(c) The board shall annually adjust the recipient's highest average compensation as it was at the time of retirement by an inflationary factor equivalent to the consumer price index for all urban consumers if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(d) If the disability benefit recipient fails to submit the documentation as required under subsection (1)(a), the board may suspend the benefit payments until it receives the documentation.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

History: **En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981; amd. Sec. 1, Ch. 23, L. 1987; amd. Sec. 89, Ch. 265, L. 1993; amd. Sec. 34, Ch. 562, L. 1999; amd. Sec. 37, Ch. 99, L. 2001; amd. Sec. 11, Ch. 178, L. 2013; amd. Sec. 13, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

Teachers' retirement — adjustment of disability allowance, 19-20-904.

19-3-1104. Cancellation of disability retirement benefit upon reemployment. A person receiving a disability retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's disability retirement benefit must be canceled.

History: **En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 86, Ch. 265, L. 1993; amd. Sec. 104, Ch. 42, L. 1997; amd. Sec. 18, Ch. 370, L. 1997.**

Cross-References

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-3-1105. Refunds and benefits for reemployed retired members. (1) A member with an initial retirement date before January 1, 2016, who returns to active service and accrues:

(a) less than 2 years of service credit before again terminating service:

(i) must, upon termination of service and pursuant to 19-2-602, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;

(ii) may not be awarded service credit for the period of reemployment; and

(iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;

(b) at least 2 years of service credit before again terminating service must receive a recalculated retirement benefit based on provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) A member with an initial retirement date on or after January 1, 2016, who returns to active service and accrues:

(a) less than 5 years of service credit before again terminating service:

(i) must, upon termination of service and pursuant to 19-2-602, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;

(ii) may not be awarded service credit for the period of reemployment; and

(iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;

(b) at least 5 years of service credit before again terminating service must, starting the first month following termination:

(i) receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(ii) receive a second retirement benefit calculated for the period of reemployment under 19-3-904 or 19-3-906, as applicable, and based on the laws in effect as of the member's rehire date.

(3) Members who return to active service following retirement may not accrue postretirement benefit adjustments under Title 19, chapter 3, part 16, during the member's term of reemployment.

(4) Postretirement benefit adjustments will start to accrue on the benefits under:

(a) subsections (1)(a)(iii) and (2)(a)(iii) in January immediately following the member's second retirement;

(b) subsections (1)(b) and (2)(b) in January after the member has received the recalculated benefit for at least 12 months.

(5) Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 87, Ch. 265, L. 1993; amd. Sec. 38, Ch. 99, L. 2001; amd. Sec. 9, Ch. 128, L. 2007; amd. Sec. 11, Ch. 248, L. 2015; amd. Sec. 13, Ch. 195, L. 2017.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions. (1) A retired member under 65 years of age who was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retired member who is 65 years of age or older but less than 70½ years of age, who has been terminated from employment for at least 90 days, and who returns to employment

covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefit, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) Except as provided in 19-3-412 and 19-3-413, a retiree returning to employment covered by the retirement system may elect to return to active service at any time during this period of employment covered by the retirement system.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) but are subject to the reporting requirements in subsection (3):

(a) a retired member who is 70½ years of age or older;

(b) an elected official in a covered position who, as a retired member, declines optional membership as provided in 19-3-413; or

(c) a retired member who receives compensation, such as witness fees, for a limited period as a necessary witness in an ongoing civil or criminal matter related to their former employment.

(6) If a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(7) (a) For the purposes of this section, "employment covered by the retirement system" includes:

(i) work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102; and

(ii) services performed by a retiree as an independent contractor for an employer participating in the system.

(b) For the purposes of this section, compensation for a retiree covered by subsection (7)(a) is limited to compensation for the work performed by the retiree and does not include any additional payment for overhead costs or costs not directly related to the work performed.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981; amd. Sec. 2, Ch. 303, L. 1985; amd. Sec. 2, Ch. 275, L. 1991; amd. Sec. 88, Ch. 265, L. 1993; amd. Sec. 1, Ch. 460, L. 1995; amd. Sec. 35, Ch. 562, L. 1999; amd. Sec. 3, Ch. 66, L. 2001; amd. Sec. 39, Ch. 99, L. 2001; amd. Sec. 2, Ch. 402, L. 2003; amd. Sec. 37, Ch. 429, L. 2003; amd. Sec. 10, Ch. 128, L. 2007; amd. Sec. 15, Ch. 283, L. 2009; amd. Sec. 21, Ch. 99, L. 2011; amd. Sec. 10, Ch. 369, L. 2011; amd. Sec. 12, Ch. 178, L. 2013; amd. Sec. 12, Ch. 248, L. 2015; amd. Sec. 14, Ch. 195, L. 2017; amd. Sec. 14, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 14, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

Teachers' retirement — adjustment of disability allowance, 19-20-904.

19-3-1107. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 631, L. 1985.

19-3-1108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 179, L. 1987.

19-3-1109. Renumbered 19-3-1601. Code Commissioner, 1993.

19-3-1110. Renumbered 19-3-1602. Code Commissioner, 1993.

19-3-1111. Renumbered 19-3-1603. Code Commissioner, 1993.

19-3-1112. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

19-3-1113. Contributions required for retirees who return to work. (1) Beginning July 1, 2013, each employer shall contribute the amount specified in 19-3-316 and the state shall contribute the amount specified in 19-3-319 for retired members who return to work in a covered position but who, under the provisions of 19-3-1106(4), have not become active members.

(2) Retired members who return to active service under the provisions of 19-3-1106 are subject to the employee, employer, and state contributions set forth in 19-3-315, 19-3-316, and 19-3-319.

History: En. Sec. 1, Ch. 239, L. 2013.

Part 12
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Teachers' retirement — death benefits, Title 19, ch. 20, part 10.

19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member who dies:

(1) while in service;

(2) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;

(3) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or

(4) while an inactive member.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301; amd. Sec. 4, Ch. 196, L. 1989; amd. Sec. 78, Ch. 265, L. 1993; amd. Sec. 38, Ch. 429, L. 2003; amd. Sec. 22, Ch. 99, L. 2011.

19-3-1202. Amount of death payment. (1) The amount of death payment to be made to the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) (a) A beneficiary of a member who was inactive for less than 6 months at the time of death is eligible to receive the payment described in subsection (1)(b).

(b) A beneficiary of a member who was inactive for 6 or more months at the time of death is not eligible to receive the payment described in subsection (1)(b).

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981; amd. Sec. 57, Ch. 613, L. 1989; amd. Sec. 79, Ch. 265, L. 1993; amd. Sec. 39, Ch. 429, L. 2003; amd. Sec. 11, Ch. 128, L. 2007; amd. Sec. 23, Ch. 99, L. 2011.

19-3-1203. Election of optional death annuity. The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the death payment provided for in 19-3-1202 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits.

History: **En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303; amd. Sec. 80, Ch. 265, L. 1993; amd. Sec. 40, Ch. 99, L. 2001; amd. Sec. 12, Ch. 128, L. 2007; amd. Sec. 24, Ch. 99, L. 2011.**

19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) the deceased member on behalf of whom the death benefit is payable had completed 5 years of membership service;

(b) the designated beneficiary is a natural person; and

(c) the designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.

History: **En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304; amd. Sec. 2, Ch. 153, L. 1985; amd. Sec. 5, Ch. 196, L. 1989; amd. Sec. 81, Ch. 265, L. 1993; amd. Sec. 36, Ch. 562, L. 1999; amd. Sec. 41, Ch. 99, L. 2001; amd. Sec. 25, Ch. 329, L. 2005; amd. Sec. 13, Ch. 128, L. 2007.**

19-3-1205. Amount of survivorship benefit. (1) For a member hired prior to July 1, 2011, the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:

(a) the accrued portion of the early retirement benefit pursuant to 19-3-906(1) that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service at the time of death;

(b) if the deceased member had attained age 50 or earned 25 years of membership service at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(c) if the deceased member had attained age 60 or earned 30 years of membership service at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

(2) For a member hired on or after July 1, 2011, the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:

(a) the accrued portion of the early retirement benefit pursuant to 19-3-906(3) that would have been payable to the member commencing at age 55 if the member had not attained age 55 at the time of death;

(b) if the deceased member had attained age 55 at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(c) if the deceased member had attained age 65 at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

History: **En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305; amd. Sec. 82, Ch. 265, L. 1993; amd. Sec. 13, Ch. 412, L. 1995; amd. Sec. 105, Ch. 42, L. 1997; amd. Sec. 40, Ch. 429, L. 2003; amd. Sec. 11, Ch. 369, L. 2011.**

19-3-1206 through 19-3-1209 reserved.

19-3-1210. Death payments to designated beneficiaries of retired members. (1) When a retired member receiving an option 1 retirement benefit under 19-3-1501 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(2) If a retired member receiving an option 2 or 3 retirement benefit under 19-3-1501 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) This section does not apply if the member was receiving a disability benefit. The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).

History: En. Sec. 83, Ch. 265, L. 1993; amd. Sec. 37, Ch. 562, L. 1999; amd. Sec. 41, Ch. 429, L. 2003; amd. Sec. 16, Ch. 283, L. 2009; amd. Sec. 13, Ch. 178, L. 2013; amd. Sec. 13, Ch. 248, L. 2015.

Cross-References

Designation of beneficiary, 19-2-801.

19-3-1211. Refund when former member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(6) and before receiving the member's accumulated contributions must be paid to the designated beneficiary.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b); amd. Sec. 84, Ch. 265, L. 1993; Sec. 19-3-404, MCA 1991; redes. 19-3-1211 by Code Commissioner, 1993; amd. Sec. 10, Ch. 400, L. 2023.

19-3-1212. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 13
Beneficiaries
(Renumbered and Repealed)

19-3-1301. Renumbered 19-2-801. Sec. 238, Ch. 265, L. 1993.

19-3-1302. Renumbered 19-2-802. Sec. 238, Ch. 265, L. 1993.

19-3-1303. Repealed. Sec. 12, Ch. 496, L. 1981.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(3).

19-3-1304. Renumbered 19-2-803. Sec. 238, Ch. 265, L. 1993.

19-3-1305. Renumbered 19-2-804. Sec. 238, Ch. 265, L. 1993.

Part 14
Management of Allowance Payments
(Renumbered)

19-3-1401. Renumbered 19-2-901. Sec. 238, Ch. 265, L. 1993.

19-3-1402. Renumbered 19-2-902. Sec. 238, Ch. 265, L. 1993.

19-3-1403. Renumbered 19-2-903. Sec. 238, Ch. 265, L. 1993.

19-3-1404. Renumbered 19-2-904. Sec. 238, Ch. 265, L. 1993.

Part 15
Optional Forms of Benefit Payments

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after terminating service and within 30 days after the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, then the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203; amd. Sec. 1, Ch. 527, L. 1985; amd. Sec. 85, Ch. 265, L. 1993; Sec. 19-3-1101, MCA 1991; redes. 19-3-1501 by Code Commissioner, 1993; amd. Sec. 1, Ch. 217, L. 1999; amd. Sec. 38, Ch. 562, L. 1999; amd. Sec. 42, Ch. 99, L. 2001; amd. Sec. 42, Ch. 429, L. 2003; amd. Sec. 26, Ch. 329, L. 2005; amd. Sec. 13, Ch. 284, L. 2009; amd. Sec. 25, Ch. 99, L. 2011; amd. Sec. 14, Ch. 178, L. 2013; amd. Sec. 14, Ch. 248, L. 2015.

Cross-References

Judges' retirement — optional forms of benefits, 19-5-701.
Sheriffs' retirement — optional forms of benefits, 19-7-1001.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.
Teachers' retirement — optional allowances, 19-20-702.

19-3-1502. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 16
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-3-1601. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 90, Ch. 265, L. 1993; Sec. 19-3-1109, MCA 1991; redes. 19-3-1601 by Code Commissioner, 1993.

19-3-1602. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 91, Ch. 265, L. 1993; Sec. 19-3-1110, MCA 1991; redes. 19-3-1602 by Code Commissioner, 1993.

19-3-1603. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 92, Ch. 265, L. 1993; Sec. 19-3-1111, MCA 1991; redes. 19-3-1603 by Code Commissioner, 1993.

19-3-1604. Repealed. Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 1, Ch. 367, L. 1993.

19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the

recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection (4)(b) more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage increase under subsection (1) is 3% if the member was hired or assumed office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, and before July 1, 2013, and the benefit recipient is a member of a retirement system provided for in this title, and the guaranteed annual benefit adjustment provision for that member under that system is a 3% benefit increase.

(b) The applicable percentage increase under subsection (1) is 1.5% if the member was hired or assumed office on or after July 1, 2007, and before June 30, 2013, and the benefit recipient is not otherwise covered under subsection (4)(a)(ii).

(c) The applicable percentage increase under subsection (1) is 1.5% if the member was hired or assumed office on or after July 1, 2013, subject to reduction as provided in subsection (5).

(5) (a) Except as provided in subsection (5)(b), if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, the applicable percentage increase in subsection (4)(c) must be reduced by 0.1% for each 2% below that 90% funding level.

(b) If the amortization period is 40 years or greater, the applicable percentage increase in subsection (4)(c) must be reduced to 0% and the retirement allowance may not be increased.

(6) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 39, Ch. 562, L. 1999; amd. Sec. 1, Ch. 62, L. 2001; amd. Sec. 3, Ch. 149, L. 2001; amd. Sec. 1, Ch. 309, L. 2001; amd. Sec. 3, Ch. 371, L. 2007; amd. Sec. 5, Ch. 390, L. 2013; amd. Sec. 5, Ch. 172, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-1606. Repealed. Sec. 39, Ch. 99, L. 2011.

History: En. Sec. 4, Ch. 149, L. 2001.

19-3-1607. Nonapplication of part to defined contribution plan. Unless otherwise explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 13, Ch. 490, L. 2001.

Parts 17 through 20 reserved

Part 21
Defined Contribution Plan

19-3-2101. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means a person with a retirement account in the defined contribution plan.

(2) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

(3) "University system retirement program" means the retirement plan established by the board of regents under Title 19, chapter 21.

History: En. Sec. 42, Ch. 471, L. 1999; amd. Sec. 14, Ch. 490, L. 2001; amd. Sec. 3, Ch. 282, L. 2013.

19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services. (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan, including assets of the long-term disability plan pursuant to 19-3-2141, must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

History: En. Sec. 43, Ch. 471, L. 1999; amd. Sec. 15, Ch. 490, L. 2001; amd. Sec. 4, Ch. 140, L. 2015.

19-3-2103. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable member services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for members to attend educational programs sponsored by the board pursuant to 19-3-112.

History: En. Sec. 44, Ch. 471, L. 1999; amd. Sec. 43, Ch. 429, L. 2003.

19-3-2104. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title.

History: En. Sec. 45, Ch. 471, L. 1999; amd. Sec. 27, Ch. 329, L. 2005.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2105. Administrative expenses and fees. (1) The board may establish a fund within the defined contribution plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

History: En. Sec. 46, Ch. 471, L. 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

19-3-2106. Limited contract right. The statutory provisions governing the defined contribution plan and the university system retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the university system retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

History: En. Sec. 16, Ch. 490, L. 2001; amd. Sec. 4, Ch. 282, L. 2013.

19-3-2107 through 19-3-2110 reserved.

19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) a member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

History: En. Sec. 47, Ch. 471, L. 1999; amd. Sec. 17, Ch. 490, L. 2001; amd. Sec. 44, Ch. 429, L. 2003; amd. Sec. 28, Ch. 329, L. 2005; amd. Sec. 14, Ch. 128, L. 2007; amd. Sec. 17, Ch. 283, L. 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system retirement program provided for under Title 19, chapter 21.

(2) Except as otherwise provided in this part, an election to transfer membership to the university system retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the university system retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the university system retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under Title 19, chapters 3 and 21, but must be a member of the defined benefit plan, the defined contribution plan, or the university system retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the university system retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the university system retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the university system retirement program unless the order is modified to apply under the university system retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the university system retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the university system retirement program, the board shall transfer to the university system retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the university system retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

History: **En. Sec. 48, Ch. 471, L. 1999; amd. Sec. 18, Ch. 490, L. 2001; amd. Sec. 45, Ch. 429, L. 2003; amd. Sec. 29, Ch. 329, L. 2005; amd. Sec. 15, Ch. 128, L. 2007; amd. Sec. 5, Ch. 282, L. 2013.**

19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan. (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the university system retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the university system retirement program.

History: **En. Sec. 49, Ch. 471, L. 1999; amd. Sec. 19, Ch. 490, L. 2001; amd. Sec. 46, Ch. 429, L. 2003; amd. Sec. 16, Ch. 128, L. 2007; amd. Sec. 6, Ch. 282, L. 2013.**

19-3-2114. Amount available to transfer. For an employee who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus compounded annual interest equal to the assumed rate of return on investments adopted by the board as of the effective date of the transfer.

History: **En. Sec. 50, Ch. 471, L. 1999; amd. Sec. 20, Ch. 490, L. 2001; amd. Sec. 47, Ch. 429, L. 2003; amd. Sec. 30, Ch. 329, L. 2005; amd. Sec. 26, Ch. 99, L. 2011; amd. Sec. 6, Ch. 172, L. 2021.**

19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting. (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's vested account as allowed under applicable federal law.

(b) To transfer service credit from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service credit may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code.

History: En. Sec. 51, Ch. 471, L. 1999; amd. Sec. 21, Ch. 490, L. 2001; amd. Sec. 48, Ch. 429, L. 2003.

19-3-2116. Vesting — mandatory termination of membership — forfeitures. (1) A member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan.

(2) A member's employer contribution account includes the employer's contributions and the income on those contributions and is vested only when the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates service after becoming a vested member may terminate plan membership as provided in 19-3-2123.

(5) A member who terminates service before becoming a vested member shall terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

(6) If the member's employer contribution account is not vested upon termination of plan membership, as provided in 19-3-2123, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

History: En. Sec. 52, Ch. 471, L. 1999; amd. Sec. 22, Ch. 490, L. 2001; amd. Sec. 49, Ch. 429, L. 2003; amd. Sec. 31, Ch. 329, L. 2005.

19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to subsections (3) and (4), of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141;

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the percentage specified in subsection (3) of this section of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;

(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member's retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).

(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.

(4) Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (3), if any, must be allocated to the member's retirement account.

(5) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses.

History: En. Sec. 53, Ch. 471, L. 1999; amd. Secs. 5, 14(2)(a), Ch. 423, L. 2001; amd. Sec. 23, Ch. 490, L. 2001; amd. Sec. 51, Ch. 114, L. 2003; amd. Sec. 50, Ch. 429, L. 2003; amd. Sec. 32, Ch. 329, L. 2005; amd. Sec. 4, Ch. 371, L. 2007; amd. Sec. 27, Ch. 99, L. 2011; amd. Sec. 12, Ch. 369, L. 2011; amd. Sec. 6, Ch. 390, L. 2013; amd. Sec. 3, Ch. 170, L. 2015.

19-3-2118 through 19-3-2120 reserved.

19-3-2121. Repealed. Sec. 5, Ch. 170, L. 2015.

History: En. Sec. 54, Ch. 471, L. 1999; amd. Sec. 6, Ch. 423, L. 2001; amd. Sec. 24, Ch. 490, L. 2001; amd. Sec. 33, Ch. 329, L. 2005; amd. Sec. 41, Ch. 2, L. 2009.

19-3-2122. Investment alternatives — notice of changes — default fund. (1) The board shall provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) The investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan.

History: En. Sec. 55, Ch. 471, L. 1999; amd. Sec. 25, Ch. 490, L. 2001.

19-3-2123. Payout of vested account balances when terminating plan membership. Except as provided in 19-3-2142, any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan, which includes an individual retirement account or annuity and, effective January 1, 2008, a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A, pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31);

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code, 26 U.S.C. 402(c); or

(3) a lump-sum distribution of the member's vested account balance.

History: **En. Sec. 56, Ch. 471, L. 1999; amd. Sec. 7, Ch. 423, L. 2001; amd. Sec. 26, Ch. 490, L. 2001; amd. Sec. 14, Ch. 284, L. 2009.**

19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions. (1) Subject to 19-3-2116, 19-3-2126, and 19-3-2142, a member may, after termination of service, leave the member's vested account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of service and upon filing a written application with the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70½ years of age if the member was born before July 1, 1949, or less than 72 years of age if the member was born after June 30, 1949, who returns to service may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007.

History: **En. Sec. 57, Ch. 471, L. 1999; amd. Sec. 8, Ch. 423, L. 2001; amd. Sec. 27, Ch. 490, L. 2001; amd. Sec. 7, Ch. 172, L. 2021.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-3-2125. Death benefits. A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon filing a written application with the board after the death of a plan member, the member's beneficiary is entitled to the member's vested account balance subject to this part.

History: **En. Sec. 58, Ch. 471, L. 1999; amd. Sec. 28, Ch. 490, L. 2001.**

19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between $200 and $1,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31), of the eligible rollover distribution portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(5) A member who terminates service with an account balance greater than $1,000, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation and in accordance with the requirements of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations.

History: En. Sec. 59, Ch. 471, L. 1999; amd. Secs. 9, 14(2)(b), Ch. 423, L. 2001; amd. Sec. 29, Ch. 490, L. 2001; amd. Sec. 51, Ch. 429, L. 2003; amd. Sec. 34, Ch. 329, L. 2005; amd. Sec. 15, Ch. 284, L. 2009.

19-3-2127 through 19-3-2130 reserved.

19-3-2131. Terminated. Sec. 81(2), Ch. 471, L. 1999.

History: En. Sec. 60, Ch. 471, L. 1999.

19-3-2132. Terminated. Sec. 81(1), Ch. 471, L. 1999.

History: En. Sec. 61, Ch. 471, L. 1999.

19-3-2133. Employee investment advisory council. (1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

(a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(c) review existing deferred compensation plans and to advise the board on the administration of the program.

(2) The advisory council is not subject to 2-15-122, except for payment of travel expenses.

History: En. Sec. 62, Ch. 471, L. 1999; amd. Sec. 30, Ch. 490, L. 2001; amd. Sec. 52, Ch. 429, L. 2003; amd. Sec. 18, Ch. 283, L. 2009; amd. Sec. 15, Ch. 178, L. 2013.

19-3-2134. Terminated. Sec. 81(1), Ch. 471, L. 1999.

History: En. Sec. 63, Ch. 471, L. 1999.

19-3-2135 through 19-3-2140 reserved.

19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) For members hired prior to July 1, 2011:

(a) except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) an eligible member with at least 25 years of membership service is entitled to a disability benefit equal to 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after July 1, 2011, the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to July 1, 2011:

(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years;

(c) for members hired on or after July 1, 2011:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 70 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years;

(d) the provisions of 19-3-1103 and 19-3-1104; and

(e) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(4) Application for a disability benefit must be made in accordance with 19-2-406.

(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125. Any disability benefits paid in error after the member's death may be recovered by the board pursuant to 19-2-903.

(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 423, L. 2001; amd. Sec. 14(1), Ch. 423, L. 2001; amd. Sec. 53, Ch. 429, L. 2003; amd. Sec. 13, Ch. 369, L. 2011; amd. Sec. 16, Ch. 178, L. 2013; amd. Sec. 15, Ch. 248, L. 2015; amd. Sec. 15, Ch. 195, L. 2017; amd. Sec. 8, Ch. 172, L. 2021.

19-3-2142. Disability benefit recipients to remain members — access to account prohibited. A plan member who is receiving a disability benefit pursuant to 19-3-2141 remains a member of the retirement plan irrespective of employment status and may not receive a distribution from the member's retirement account.

History: En. Sec. 2, Ch. 423, L. 2001.

19-3-2143. Implementation. (1) To implement the provisions of 19-3-2141, the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) If the disability plan cannot be implemented as described in subsection (1), the board shall implement the provisions of 19-3-2141 by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141.

History: En. Sec. 10, Ch. 423, L. 2001.

CHAPTER 4

TEACHERS' RETIREMENT

(Renumbered and Repealed)

Part 1 — General Provisions (Renumbered)

Part 2 — Administration of System (Renumbered)

Part 3 — Membership (Renumbered and Repealed)

Part 4 — Creditable Service (Renumbered)

Part 5 — Management of Funds (Renumbered)

Part 6 — Funds — Contributions (Renumbered and Repealed)

Part 7 — Benefits in General (Renumbered)

Part 8 — Superannuation Retirement (Renumbered and Repealed)

Part 9 — Disability Retirement (Renumbered)

Part 10 — Death Benefits (Renumbered)

Part 11 — Group Insurance (Renumbered)

Part 1
General Provisions
(Renumbered)

19-4-101. Renumbered 19-20-101. Code Commissioner, 1993.

19-4-102. Renumbered 19-20-102. Code Commissioner, 1993.

19-4-103. Renumbered 19-20-103. Code Commissioner, 1993.

19-4-104. Renumbered 19-20-104. Code Commissioner, 1993.

19-4-105. Renumbered 19-20-105. Code Commissioner, 1993.

Part 2
Administration of System
(Renumbered)

19-4-201. Renumbered 19-20-201. Code Commissioner, 1993.

19-4-202. Renumbered 19-20-202. Code Commissioner, 1993.

19-4-203. Renumbered 19-20-203. Code Commissioner, 1993.

19-4-204. Renumbered 19-20-204. Code Commissioner, 1993.

19-4-205. Renumbered 19-20-205. Code Commissioner, 1993.

19-4-206. Renumbered 19-20-206. Code Commissioner, 1993.

19-4-207. Renumbered 19-20-207. Code Commissioner, 1993.

19-4-208. Renumbered 19-20-208. Code Commissioner, 1993.

Part 3
Membership
(Renumbered and Repealed)

19-4-301. Renumbered 19-20-301. Code Commissioner, 1993.

19-4-302. Renumbered 19-20-302. Code Commissioner, 1993.

19-4-303. Renumbered 19-20-303. Code Commissioner, 1993.

19-4-304. Renumbered 19-20-304. Code Commissioner, 1993.

19-4-305. Repealed. Sec. 2, Ch. 210, L. 1983.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(c).

Part 4
Creditable Service
(Renumbered)

19-4-401. Renumbered 19-20-401. Code Commissioner, 1993.

19-4-402. Renumbered 19-20-402. Code Commissioner, 1993.

19-4-403. Renumbered 19-20-403. Code Commissioner, 1993.

19-4-404. Renumbered 19-20-404. Code Commissioner, 1993.

19-4-405. Renumbered 19-20-405. Code Commissioner, 1993.

19-4-406. Renumbered 19-20-406. Code Commissioner, 1993.

19-4-407. Renumbered 19-20-407. Code Commissioner, 1993.

19-4-408. Renumbered 19-20-408. Code Commissioner, 1993.

19-4-409. Renumbered 19-20-409. Code Commissioner, 1993.

19-4-410. Renumbered 19-20-410. Code Commissioner, 1993.

19-4-411. Renumbered 19-20-411. Code Commissioner, 1993.

19-4-412. Renumbered 19-20-412. Code Commissioner, 1993.

19-4-413. Renumbered 19-20-413. Code Commissioner, 1993.

Part 5
Management of Funds
(Renumbered)

19-4-501. Renumbered 19-20-501. Code Commissioner, 1993.

19-4-502. Renumbered 19-20-502. Code Commissioner, 1993.

19-4-503. Renumbered 19-20-503. Code Commissioner, 1993.

19-4-504. Renumbered 19-20-504. Code Commissioner, 1993.

Part 6
Funds — Contributions
(Renumbered and Repealed)

19-4-601. Renumbered 19-20-601. Code Commissioner, 1993.

19-4-602. Renumbered 19-20-602. Code Commissioner, 1993.

19-4-603. Renumbered 19-20-603. Code Commissioner, 1993.

19-4-604. Repealed. Sec. 2, Ch. 251, L. 1981.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(3).

19-4-605. Renumbered 19-20-605. Code Commissioner, 1993.

19-4-606. Renumbered 19-20-606. Code Commissioner, 1993.

Part 7
Benefits in General
(Renumbered)

19-4-701. Renumbered 19-20-701. Code Commissioner, 1993.

19-4-702. Renumbered 19-20-702. Code Commissioner, 1993.

19-4-703. Renumbered 19-20-703. Code Commissioner, 1993.

19-4-704. Renumbered 19-20-704. Code Commissioner, 1993.

19-4-705. Renumbered 19-20-705. Code Commissioner, 1993.

19-4-706. Renumbered 19-20-706. Code Commissioner, 1993.

19-4-707. Renumbered 19-20-707. Code Commissioner, 1993.

19-4-708. Renumbered 19-20-708. Code Commissioner, 1993.

19-4-709. Renumbered 19-20-709. Code Commissioner, 1993.

19-4-710. Renumbered 19-20-710. Code Commissioner, 1993.

19-4-711. Renumbered 19-20-711. Code Commissioner, 1993.

19-4-712. Renumbered 19-20-712. Code Commissioner, 1993.

19-4-713. Renumbered 19-20-713. Code Commissioner, 1993.

Part 8
Superannuation Retirement (Renumbered and Repealed)

19-4-801. Renumbered 19-20-801. Code Commissioner, 1993.

19-4-802. Renumbered 19-20-802. Code Commissioner, 1993.

19-4-803. Repealed. Sec. 2, Ch. 210, L. 1983.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(b); amd. Sec. 5, Ch. 114, L. 1979.

19-4-804. Renumbered 19-20-804. Code Commissioner, 1993.

Part 9
Disability Retirement (Renumbered)

19-4-901. Renumbered 19-20-901. Code Commissioner, 1993.

19-4-902. Renumbered 19-20-902. Code Commissioner, 1993.

19-4-903. Renumbered 19-20-903. Code Commissioner, 1993.

19-4-904. Renumbered 19-20-904. Code Commissioner, 1993.

19-4-905. Renumbered 19-20-905. Code Commissioner, 1993.

Part 10
Death Benefits (Renumbered)

19-4-1001. Renumbered 19-20-1001. Code Commissioner, 1993.

19-4-1002. Renumbered 19-20-1002. Code Commissioner, 1993.

Part 11
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19-4-1101. Renumbered 19-20-1101. Code Commissioner, 1993.

CHAPTER 5
JUDGES' RETIREMENT

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19-5-702. Repealed.
19-5-703. Repealed.
19-5-704. Repealed.
19-5-705. Repealed.
19-5-706. Repealed.

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Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Courts and judicial officers generally, Title 3, ch. 1.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

Part Cross-References

Judicial Standards Commission — orders for retirement or removal, 3-1-1111.

19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

(b) Compensation does not include bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(2) "Current salary" means the current compensation for the office retired from.

(3) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service.

(b) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975; amd. Sec. 1, Ch. 63, L. 1977; amd. Sec. 5, Ch. 132, L. 1977; R.C.M. 1947, 93-1107; amd. Sec. 4, Ch. 282, L. 1983; amd. Sec. 3, Ch. 45, L. 1987; amd. Sec. 6, Ch. 196, L. 1989; amd. Sec. 95, Ch. 265, L. 1993; amd. Sec. 18, Ch. 455, L. 1995; amd. Sec. 13, Ch. 287, L. 1997; amd. Sec. 43, Ch. 99, L. 2001; amd. Sec. 54, Ch. 429, L. 2003; amd. Sec. 4, Ch. 386, L. 2013; amd. Sec. 15, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 15, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-5-102. Judges' retirement system established. There is a retirement plan known as the judges' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 93-1107.1 by Sec. 2, Ch. 63, L. 1977; R.C.M. 1947, 93-1107.1; amd. Sec. 94, Ch. 265, L. 1993; amd. Sec. 40, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.
Chief Water Judge — membership in system, 19-5-301.

19-5-103. Call of retired judges and justices and inactive vested members for duty. (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any duties that are not inconsistent with the constitution of the state.

(2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

(i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

(ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily discontinued service as an active judge after at least 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year.

History: En. Sec. 24, Ch. 289, L. 1967; R.C.M. 1947, 93-1130; amd. Sec. 1, ch. 254, L. 1979; amd. Sec. 5, Ch. 80, L. 1981; amd. Sec. 3, Ch. 256, L. 1983; amd. Sec. 1, Ch. 425, L. 1983; amd. Sec. 96, Ch. 265, L. 1993; amd. Sec. 20, Ch. 370, L. 1997; amd. Sec. 1, Ch. 233, L. 1999; amd. Sec. 1, Ch. 48, L. 2001; amd. Sec. 35, Ch. 329, L. 2005; amd. Sec. 1, Ch. 21, L. 2015.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.
Judicial Standards Commission, Title 3, ch. 1, part 11.
Salaries and expenses of District Judges, 3-5-211.
Water Judges, Title 3, ch. 7, part 2.

19-5-104. Renumbered 19-2-1009. Sec. 238, Ch. 265, L. 1993.

19-5-105. Short title. This chapter may be cited as the "Judges' Retirement Act".

History: En. Sec. 93, Ch. 265, L. 1993.

19-5-106. Judges' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the judges' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 2, Ch. 2, L. 2023.

Part 2
Administration
(Repealed)

19-5-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).

19-5-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110; amd. Sec. 1, Ch. 235, L. 1981; amd. Sec. 5, Ch. 282, L. 1983.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

PERS — membership, Title 19, ch. 3, part 4.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership, Title 19, ch. 7, part 3.

Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, or a workers' compensation judge who elected in writing to remain under the public employees' retirement system on or before October 1, 2025, a judge of a district court, a justice of the supreme court, the chief water judge or associate water judge provided for in 3-7-221, and the workers' compensation judge provided for in 3-9-101 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2); amd. Sec. 1, Ch. 298, L. 1985; amd. Sec. 1, Ch. 364, L. 1991; amd. Sec. 97, Ch. 265, L. 1993; amd. Sec. 55, Ch. 429, L. 2003; amd. Sec. 8, Ch. 335, L. 2011; amd. Sec. 4, Ch. 688, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 688, L. 2025. Amendment effective July 1, 2025.

Cross-References

Legislators — continued participation, 5-2-304.

PERS — refund when member dies after transferring to another system, 19-3-1211.

19-5-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 289, L. 1967; Sec. 93-1114, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1114, 93-1125(part).

19-5-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(3).

19-5-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 289, L. 1967; amd. Sec. 9, Ch. 63, L. 1977; R.C.M. 1947, 93-1128.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-5-401. Payments into pension trust fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the board, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the board, but separate accounts must be maintained for the judges' retirement system.

History: En. Sec. 5, Ch. 289, L. 1967; amd. Sec. 4, Ch. 63, L. 1977; R.C.M. 1947, 93-1111; amd. Sec. 98, Ch. 265, L. 1993; amd. Sec. 41, Ch. 562, L. 1999.

Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Firefighters' retirement — contributions to fund, 19-18-501.

19-5-402. Member's contribution. (1) Each member's contribution is 7% of the member's compensation.

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 289, L. 1967; R.C.M. 1947, 93-1115; amd. Sec. 2, Ch. 524, L. 1983; amd. Sec. 1, Ch. 74, L. 1991; amd. Sec. 99, Ch. 265, L. 1993; amd. Sec. 36, Ch. 329, L. 2005.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-5-403. Refunds in case of resignation or discharge. When a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the board's receipt of the member's written application for a refund.

History: En. Sec. 16, Ch. 289, L. 1967; R.C.M. 1947, 93-1122; amd. Sec. 1, Ch. 50, L. 1991; amd. Sec. 100, Ch. 265, L. 1993.

Cross-References

Refund of contributions on termination of service, 19-2-602.

Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-5-404. State employer contribution. (1) Except as provided in subsections (2) and (3), the state shall pay as employer contributions 0% of the compensation paid to all of the employer's employees, except those properly excluded from membership.

(2) Except as provided in subsection (3), the state shall contribute monthly from the natural resources operations state special revenue account, established in 15-38-301, to the judges' pension trust fund an amount equal to 0% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section.

(3) If, based on the most recently available actuarial study for the judges' retirement system, the funded ratio of the plans drops below 120% funded, the employer contribution rates in subsections (1) and (2) must be increased to 25.81%.

History: En. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 2, Ch. 548, L. 1977; R.C.M. 1947, 93-1116(part); amd. Sec. 3, Ch. 524, L. 1983; amd. Sec. 2, Ch. 318, L. 1987; amd. Sec. 2, Ch. 642, L. 1987; amd. Secs. 1, 2, Ch. 664, L. 1989; amd. Sec. 2, Ch. 344, L. 1991; (2)En. Sec. 2, Ch. 364, L. 1991; amd. Sec. 101, Ch. 265, L. 1993; amd. Sec. 14, Ch. 287, L. 1997; amd. Sec. 20, Ch. 532, L. 1997; amd. Sec. 37, Ch. 329, L. 2005; amd. Sec. 8, Ch. 432, L. 2007; amd. Sec. 1, Ch. 1, Sp. L. November 2017; amd. Sec. 1, Ch. 272, L. 2021; amd. Sec. 8, Ch. 729, L. 2023; amd. Sec. 5, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 636, L. 2025. Amendment effective July 1, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Supreme Court fees — disposition, 3-2-404.

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-5-405. Repealed. Sec. 236, Ch. 265, L. 1993.

History: Ap. p. Sec. 10, Ch. 289, L. 1967; amd. Sec. 7, Ch. 63, L. 1977; amd. Sec. 548, L. 1977; Sec. 93-1116, R.C.M. 1947; Ap. p. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; Sec. 93-1112, R.C.M. 1947; R.C.M. 1947, 93-1112(3), 93-1116(part).

19-5-406. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 27, Ch. 289, L. 1967; R.C.M. 1947, 93-1132.

19-5-407. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(4).

19-5-408. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-5-409. Application to purchase additional service. (1) At any time before retirement, a member may file a written application with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has in the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may not purchase more than 5 years of service credit under 19-2-707 and this section.

(4) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement.

History: En. Sec. 1, Ch. 180, L. 1995; amd. Sec. 26, Ch. 58, L. 1999; amd. Sec. 44, Ch. 99, L. 2001; amd. Sec. 56, Ch. 429, L. 2003.

19-5-410. Application to purchase military service credit. (1) (a) Except as provided in subsection (1)(b) and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-5-411, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: En. Sec. 8, Ch. 26, L. 2003; en. Sec. 8, Ch. 289, L. 2003; amd. Sec. 38, Ch. 329, L. 2005; amd. Sec. 9, Ch. 172, L. 2021.

19-5-411. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-5-409 and 19-5-410.

History: En. Sec. 9, Ch. 26, L. 2003; en. Sec. 9, Ch. 289, L. 2003.

Part 5
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-5-501. Eligibility for service retirement. (1) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a vested member who has reached the age of 60 has attained normal retirement age and is eligible to receive the nonforfeitable service retirement benefit provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore.

History: (1)En. Sec. 11, Ch. 289, L. 1967; Sec. 93-1117, R.C.M. 1947; (2)En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; Sec. 93-1125, R.C.M. 1947; R.C.M. 1947, 93-1117, 93-1125(part); amd. Sec. 10, Ch. 663, L. 1987; amd. Sec. 102, Ch. 265, L. 1993; amd. Sec. 45, Ch. 99, L. 2001; amd. Sec. 1, Ch. 176, L. 2001; amd. Sec. 57, Ch. 429, L. 2003; amd. Sec. 7, Ch. 240, L. 2013.

19-5-502. Service retirement benefit. After termination from service and upon application for service retirement, the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901 or 19-5-902, 3⅓% a year of the member's current salary for the first 15 years of service credit and 1.785% a year for each year of service credit after 15 years; or

(2) for members covered under 19-5-901 or 19-5-902, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation.

History: En. Sec. 12, Ch. 289, L. 1967; R.C.M. 1947, 93-1118; amd. Sec. 3, Ch. 664, L. 1989; amd. Sec. 103, Ch. 265, L. 1993; amd. Sec. 15, Ch. 287, L. 1997; amd. Sec. 46, Ch. 99, L. 2001; amd. Sec. 58, Ch. 429, L. 2003; amd. Sec. 16, Ch. 195, L. 2017.

19-5-503. Involuntary retirement benefit. (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing with the board an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) If a member elected or appointed to office after July 1, 1983, is discontinued from service after having earned at least 12 years of service credit but before reaching normal retirement age, the member may apply for and receive a retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1).

History: En. Sec. 14, Ch. 289, L. 1967; amd. Sec. 1, Ch. 89, L. 1975; amd. Sec. 8, Ch. 63, L. 1977; R.C.M. 1947, 93-1120; amd. Sec. 4, Ch. 524, L. 1983; amd. Sec. 104, Ch. 265, L. 1993; amd. Sec. 42, Ch. 562, L. 1999; amd. Sec. 47, Ch. 99, L. 2001.

Cross-References

PERS — early retirement benefit, 19-3-906.
Highway patrol retirement — early retirement benefit, 19-6-503.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-5-504. Repealed. Sec. 1, Ch. 12, L. 1987.

History: En. Sec. 15, Ch. 289, L. 1967; R.C.M. 1947, 93-1121.

Part 6
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2. part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-5-601. Disability retirement benefit. (1) Except as provided in subsections (2) and (3), in the case of the disability of a vested member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) Except as provided in subsections (1) and (3), in the case of the disability of a vested or nonvested member, if the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be the greater of one-half of the member's current salary or one-half of the member's highest average compensation.

(3) If the member was retired at the time of becoming disabled, the member must continue to receive the same retirement benefit previously elected.

History: En. Sec. 13, Ch. 289, L. 1967; R.C.M. 1947, 93-1119; amd. Sec. 105, Ch. 265, L. 1993; amd. Sec. 16, Ch. 287, L. 1997; amd. Sec. 41(3), Ch. 370, L. 1997; amd. Sec. 48, Ch. 99, L. 2001; amd. Sec. 19, Ch. 283, L. 2009; amd. Sec. 17, Ch. 178, L. 2013.

Cross-References

Supreme Court power to retire for disability on recommendation of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.
Action by Supreme Court on recommendation of Judicial Standards Commission, 3-1-1107.
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-5-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 289, L. 1967; R.C.M. 1947, 93-1127.

19-5-603. Renumbered 19-5-801. Code Commissioner, 1993.

19-5-604. Renumbered 19-5-802. Code Commissioner, 1993.

19-5-605 through 19-5-610 reserved.

19-5-611. Renumbered 19-2-406. Sec. 238, Ch. 265, L. 1993.

19-5-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit.

(3) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. Sec. 2, Ch. 597, L. 1981; amd. Sec. 106, Ch. 265, L. 1993; amd. Sec. 14, Ch. 412, L. 1995; amd. Sec. 20, Ch. 283, L. 2009; amd. Sec. 11, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7
Optional Benefit Payments

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after terminating service and within 30 days after the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: En. Sec. 25, Ch. 289, L. 1967; amd. Sec. 10, Ch. 63, L. 1977; R.C.M. 1947, 93-1131; amd. Sec. 1, Ch. 126, L. 1987; amd. Sec. 109, Ch. 265, L. 1993; amd. Sec. 2, Ch. 217, L. 1999; amd. Sec. 43, Ch. 562, L. 1999; amd. Sec. 49, Ch. 99, L. 2001; amd. Sec. 59, Ch. 429, L. 2003; amd. Sec. 39, Ch. 329, L. 2005; amd. Sec. 16, Ch. 284, L. 2009; amd. Sec. 28, Ch. 99, L. 2011; amd. Sec. 18, Ch. 178, L. 2013; amd. Sec. 16, Ch. 248, L. 2015.

Cross-References

PERS — optional forms of benefits, 19-3-1501.

Sheriffs' retirement — optional forms of benefits, 19-7-1001.

Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.

Teachers' retirement — optional allowances, 19-20-702.

19-5-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 289, L. 1967; amd. Sec. 21, Ch. 332, L. 1977; R.C.M. 1947, 93-1125(part).

19-5-703. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part).

19-5-704. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 289, L. 1967; amd. Sec. 10, Ch. 214, L. 1977; R.C.M. 1947, 93-1126; amd. Sec. 2, Ch. 74, L. 1991; amd. Sec. 8, Ch. 823, L. 1991.

19-5-705. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 93-1126.1 by Sec. 11, Ch. 214, L. 1977; R.C.M. 1947, 93-1126.1.

19-5-706. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

Part 8
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-5-801. Payments upon employment-related death. (1) Except as provided in subsection (3), if the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the member's service retirement benefit standing to the member's credit on the date of death.

(3) If the member was retired at the time of death, the provisions of 19-5-701 and 19-5-802(2) through (4) apply.

History: En. Sec. 17, Ch. 289, L. 1967; R.C.M. 1947, 93-1123; amd. Sec. 107, Ch. 265, L. 1993; Sec. 19-5-603, MCA 1991; redes. 19-5-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 370, L. 1997; amd. Sec. 50, Ch. 99, L. 2001; amd. Sec. 21, Ch. 283, L. 2009; amd. Sec. 19, Ch. 178, L. 2013.

19-5-802. Payments upon death from other than employment-related cause. (1) (a) If a vested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the retirement benefit provided in 19-5-502.

(b) If a nonvested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a lump-sum refund of the accumulated contributions standing to the member's credit at the time of the member's death.

(2) When a retired member not covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(3) When a retired member covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(4) If a retired member who elected an option 2 or 3 benefit under 19-5-701 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(5) This section does not apply if the member was receiving a disability benefit. The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).

History: **En. Sec. 18, Ch. 289, L. 1967; R.C.M. 1947, 93-1124; amd. Sec. 108, Ch. 265, L. 1993; Sec. 19-5-604, MCA 1991; redes. 19-5-802 by Code Commissioner, 1993; amd. Sec. 17, Ch. 287, L. 1997; amd. Sec. 44, Ch. 562, L. 1999; amd. Sec. 51, Ch. 99, L. 2001; amd. Sec. 22, Ch. 283, L. 2009; amd. Sec. 20, Ch. 178, L. 2013; amd. Sec. 17, Ch. 248, L. 2015; amd. Sec. 16, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 16, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Part 9

Postretirement Benefits and Benefit Increases

19-5-901. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 3% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section.

History: **En. Sec. 2, Ch. 287, L. 1997; amd. Sec. 45, Ch. 562, L. 1999; amd. Sec. 2, Ch. 62, L. 2001; amd. Sec. 5, Ch. 149, L. 2001; amd. Sec. 2, Ch. 309, L. 2001.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to December 1, 2005.

(4) The board may adopt rules to administer the provisions of this section.

(5) The decision of a member who previously elected to participate under 19-5-901 or this section remains valid. The decision of a member who previously elected not to participate under 19-5-901 or this section may be reversed under this section.

History: En. Sec. 6, Ch. 149, L. 2001; amd. Sec. 52, Ch. 114, L. 2003; amd. Sec. 40, Ch. 329, L. 2005.

CHAPTER 6

HIGHWAY PATROL OFFICERS' RETIREMENT

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19-6-410. State contribution for supplemental benefits — statutory appropriation.

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19-6-601. Disability retirement benefit.
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19-6-603. Renumbered 19-6-901.
19-6-604. Renumbered 19-6-902.
19-6-605 through 19-6-610 reserved.
19-6-611. Repealed.
19-6-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Postretirement Benefits and Benefit Increases

19-6-701. Repealed.
19-6-702. Repealed.
19-6-703. Repealed.
19-6-704. Repealed.
19-6-705. Repealed.
19-6-706. Repealed.
19-6-707. Minimum monthly benefit.
19-6-708. Repealed.
19-6-709. Supplemental benefits for certain retirees.
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Part 11 — Reemployment of Retired Members
19-6-1101. Reemployment of retired members — contributions required.
19-6-1102. Refunds and benefits for reemployed retired members.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Highway patrol, Title 44, ch. 1.

Part 1
General Provisions

19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) per diems, maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited secondary or postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event

a member has not served at least 36 months, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for compensatory leave, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977; R.C.M. 1947, 31-201; amd. Secs. 6, 7, Ch. 114, L. 1979; amd. Sec. 1, Ch. 206, L. 1981; amd. Sec. 6, Ch. 282, L. 1983; amd. Sec. 1, Ch. 86, L. 1985; amd. Sec. 1, Ch. 278, L. 1985; amd. Sec. 4, Ch. 45, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 112, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 27, Ch. 58, L. 1999; amd. Sec. 52, Ch. 99, L. 2001; amd. Sec. 7, Ch. 149, L. 2001; amd. Sec. 60, Ch. 429, L. 2003; amd. Sec. 5, Ch. 386, L. 2013; amd. Sec. 17, Ch. 195, L. 2017; amd. Sec. 1, Ch. 152, L. 2025; amd. Sec. 17, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 152, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 17, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-6-102. Highway patrol officers' retirement system established. There is a retirement plan known as the highway patrol officers' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 31-201.1 by Sec. 2, Ch. 65, L. 1977; R.C.M. 1947, 31-201.1; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 111, Ch. 265, L. 1993; amd. Sec. 46, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-6-103. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 27, Ch. 37, L. 1945; R.C.M. 1947, 31-227.

19-6-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(a), (2).

19-6-105. Repealed. Sec. 5, Ch. 206, L. 1981.

History: En. Sec. 26, Ch. 37, L. 1945; R.C.M. 1947, 31-226; amd. Sec. 7, Ch. 114, L. 1979.

19-6-106. Short title. This chapter may be cited as "The Highway Patrol Officers' Retirement Act".

History: En. Sec. 110, Ch. 265, L. 1993.

19-6-107. Highway patrol officers' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the highway patrol officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 3, Ch. 2, L. 2023.

Part 2
Administration
(Repealed and Terminated)

19-6-201. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part).

19-6-202. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-203. Repealed. Sec. 236, Ch. 256, L. 1993.

History: En. Sec. 4, Ch. 37, L. 1945; R.C.M. 1947, 31-204; amd. Sec. 2, Ch. 235, L. 1981; amd. Sec. 14, Ch. 79, L. 1983; amd. Sec. 7, Ch. 282, L. 1983.

19-6-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Sheriffs' retirement — membership, Title 19, ch. 7, part 3.

Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-6-301. Membership — inactive vested members — inactive nonvested members. (1) All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) (a) An inactive member hired before July 1, 2013, with at least 5 years of membership service is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(b) An inactive member hired on or after July 1, 2013, with at least 10 years of membership service is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(c) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member hired before July 1, 2013, with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive member hired on or after July 1, 2013, with less than 10 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(c) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977; R.C.M. 1947, 31-207; amd. Sec. 113, Ch. 265, L. 1993; amd. Sec. 41, Ch. 329, L. 2005; amd. Sec. 3, Ch. 272, L. 2013.

Cross-References

Legislators — continued participation, 5-2-304.

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.

Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

19-6-302. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977; Sec. 31-208, R.C.M. 1947; (2)En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; Sec. 31-220, R.C.M. 1947; R.C.M. 1947, 31-208(part), 31-220(part); amd. Sec. 7, Ch. 114, L. 1979.

19-6-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(1).

19-6-304. Renumbered 19-6-801. Code Commissioner, 1993.

19-6-305. Renumbered 19-6-802. Code Commissioner, 1993.

19-6-306. Renumbered 19-6-803. Code Commissioner, 1993.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.

PERS — contributions, Title 19, ch. 3, part 3.

Judges' retirement fund — contributions, Title 19, ch. 5, part 4.

Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-6-401. Payments into pension trust fund. There is a pension trust fund for the payment of benefits under the retirement system. All appropriations made by the state, all contributions by members, in the amount specified, and all interest on and earnings from the investment of money in this pension trust fund must be deposited in the pension trust fund.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 8, Ch. 282, L. 1983; amd. Sec. 5, Ch. 277, L. 1985; amd. Sec. 2, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 816, L. 1991; amd. Sec. 114, Ch. 265, L. 1993; amd. Sec. 61, Ch. 429, L. 2003; amd. Sec. 7, Ch. 428, L. 2005; amd. Sec. 4, Ch. 464, L. 2005.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.
Fund structure, 17-2-102.
Judges' retirement — payments into pension trust fund, 19-5-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.
Teachers' retirement — method of financing, 19-20-601.

19-6-402. Member's contribution. (1) (a) A member not covered under 19-6-710 shall contribute the following percentage of the member's compensation:

(i) beginning July 1, 2013, through June 30, 2014, 10%;
(ii) beginning July 1, 2014, through June 30, 2015, 11%;
(iii) beginning July 1, 2015, through June 30, 2016, 12%; and
(iv) beginning July 1, 2016, 13%.

(b) A member covered under 19-6-710, 19-6-711, or 19-6-712 shall contribute the following percentage of the member's compensation:

(i) beginning July 1, 2013, through June 30, 2014, 10.05%;
(ii) beginning July 1, 2014, through June 30, 2015, 11.05%;
(iii) beginning July 1, 2015, through June 30, 2016, 12.05%; and
(iv) beginning July 1, 2016, 13.05%.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's highest average compensation in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974; R.C.M. 1947, 31-209; amd. Sec. 2, Ch. 278, L. 1985; amd. Sec. 2, Ch. 294, L. 1985; amd. Sec. 10, Ch. 464, L. 1985; amd. Sec. 2, Ch. 816, L. 1991; amd. Sec. 115, Ch. 265, L. 1993; amd. Sec. 18, Ch. 287, L. 1997; amd. Sec. 53, Ch. 99, L. 2001; amd. Sec. 42, Ch. 329, L. 2005; amd. Sec. 4, Ch. 272, L. 2013.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-6-403. Refund of member's contribution. If a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the member's filing of a written application with the board.

History: En. Sec. 17, Ch. 37, L. 1945; amd. Sec. 2, Ch. 109, L. 1947; amd. Sec. 10, Ch. 243, L. 1955; R.C.M. 1947, 31-217; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 278, L. 1985; amd. Sec. 2, Ch. 50, L. 1991; amd. Sec. 116, Ch. 265, L. 1993; amd. Sec. 54, Ch. 99, L. 2001.

19-6-404. State employer contribution — statutory appropriation. (1) The state shall pay as employer contributions 38.33% of compensation paid to all of the employer's employees, except those properly excluded from membership, from the following sources:

(a) an amount equal to 28.15% of the total compensation of the members, which is payable, as appropriated by the legislature, from the same sources that are used to pay compensation to the members; and

(b) an amount equal to 10.18% of the total compensation of the members, which is statutorily appropriated, as provided in 17-7-502, from the general fund.

(2) Beginning July 1, 2023, and each fiscal year thereafter, the state treasurer shall transfer $500,000 from the state special revenue fund provided for in 17-2-102 to the highway patrol officers' retirement pension trust fund by August 15. This transfer must terminate when the public employees' retirement board's actuary determines that the funded ratio for the highway patrol officers' pension system is 100% funded.

(3) (a) Subject to subsection (4), the state shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (3)(b) of the compensation paid to all of the employer's employees, except for those properly excluded from membership.

(b) The percentage of compensation to be contributed under subsection (3)(a) is 0.1% for fiscal year 2026 and increases by 0.1% each fiscal year through fiscal year 2035. For fiscal years beginning after June 30, 2035, the percentage of compensation to be contributed under subsection (3)(a) is 1%.

(4) (a) The board shall review annually the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (4)(b) would not cause the amortization period to exceed 25 years.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975; R.C.M. 1947, 31-210; amd. Sec. 1, Ch. 226, L. 1979; amd. Sec. 12, Ch. 549, L. 1981; amd. Sec. 6, Ch. 277, L. 1985; amd. Sec. 4, Ch. 278, L. 1985; amd. Sec. 3, Ch. 294, L. 1985; amd. Sec. 3, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 816, L. 1991; amd. Sec. 117, Ch. 265, L. 1993; amd. Sec. 19, Ch. 287, L. 1997; amd. Sec. 43, Ch. 329, L. 2005; amd. Sec. 8, Ch. 428, L. 2005; amd. Sec. 5, Ch. 464, L. 2005; amd. Sec. 5, Ch. 272, L. 2013; amd. Sec. 9, Ch. 729, L. 2023; amd. Sec. 2, Ch. 546, L. 2025; amd. Sec. 6, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 546, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 636, L. 2025. Amendment effective May 12, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-6-405. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974; R.C.M. 1947, 31-205(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 221, L. 1991.

19-6-406. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(2).

19-6-407. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974; R.C.M. 1947, 31-230.

19-6-408. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977; R.C.M. 1947, 31-206(3).

19-6-409. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-6-410. *(Temporary)* **State contribution for supplemental benefits — statutory appropriation.** The state shall annually contribute to the pension trust fund the lump-sum amount determined by the board as required to pay benefits under 19-6-709. The amount must be calculated based upon the number of individuals eligible as provided in 19-6-709(1) through (3) and based upon the amount of benefit for the eligible individuals as provided in 19-6-709(4)(a) through (4)(c). The amount is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund. *(Terminates contingent upon death of last eligible recipient—sec. 14, Ch. 464, L. 2005.)*

History: En. Sec. 1, Ch. 464, L. 2005.

Compiler's Comments

Clarification of 2005 Contingent Termination: Section 73, Ch. 44, L. 2007, amended sec. 14, Ch. 464, L. 2005, a termination date section, in order to clarify that the amendments to 19-6-709, the insertion of the reference to [section 1] [19-6-410] in 17-7-502, and [section 1] [19-6-410] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709. Amendment effective October 1, 2007.

Contingent Termination: Section 14, Ch. 464, L. 2005, provided: "The amendments to 19-6-709 and [section 1] [19-6-410] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709."

Part 5
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-6-501. Eligibility for service retirement benefit. (1) (a) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member hired on or before June 30, 2023, is eligible to receive a nonforfeitable service retirement benefit under 19-6-502 after completing 20 years or more of membership service and terminating service.

(b) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member hired on or after July 1, 2023, is eligible to receive a nonforfeitable service retirement benefit under 19-6-502 after completing 20 years or more of membership service, reaching the age of 50, and terminating service.

(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested member is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.

History: En. Sec 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974; R.C.M. 1947, 31-211; amd. Sec. 2, Ch. 206, L. 1981; amd. Sec. 2, Ch. 53, L. 1983; amd. Sec. 5, Ch. 278, L. 1985; amd. Sec. 7, Ch. 196, L. 1989; amd. Sec. 121, Ch. 265, L. 1993; amd. Sec. 23, Ch. 370, L. 1997; amd. Sec. 55, Ch. 99, L. 2001; amd. Sec. 1, Ch. 193, L. 2001; amd. Sec. 8, Ch. 240, L. 2013; amd. Sec. 10, Ch. 729, L. 2023.

19-6-502. Service retirement benefit. After termination from service and upon application for service retirement, a member must receive a service retirement benefit equal to 2.6% of the member's highest average compensation for each year of service credit.

History: En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977; R.C.M. 1947, 31-213; amd. Sec. 6, Ch. 278, L. 1985; amd. Sec. 4, Ch. 816, L. 1991; amd. Sec. 122, Ch. 265, L. 1993; amd. Sec. 56, Ch. 99, L. 2001; amd. Sec. 62, Ch. 429, L. 2003; amd. Sec. 6, Ch. 272, L. 2013.

19-6-503. Early retirement benefit for member discontinued from service other than for cause. (1) If a member hired before July 1, 2013, is discontinued from service other than for cause after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.

(2) If a member hired on or after July 1, 2013, is discontinued from service other than for cause after having completed 10 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977; R.C.M. 1947, 31-215; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 3, Ch. 206, L. 1981; amd. Sec. 8, Ch. 278, L. 1985; amd. Sec. 123, Ch. 265, L. 1993; amd. Sec. 47, Ch. 562, L. 1999; amd. Sec. 63, Ch. 429, L. 2003; amd. Sec. 7, Ch. 272, L. 2013.

Cross-References

PERS — early retirement benefit, 19-3-906.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Firefighters' retirement — partial service pension, 19-18-603.
Teachers' retirement — early retirement, 19-20-802.

19-6-504. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. Sec. 16, Ch. 37, L. 1945; amd. Sec. 9, Ch. 243, L. 1955; R.C.M. 1947, 31-216.

19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made pursuant to 19-2-803.

(4) If a retired member dies without a surviving spouse or dependent child, the member's designated beneficiary must be paid the amount, if any, of the retired member's accumulated contributions minus the total of any retirement benefits already paid from the member's account.

History: En. Sec. 7, Ch. 278, L. 1985; amd. Sec. 1, Ch. 63, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 124, Ch. 265, L. 1993; amd. Sec. 48, Ch. 562, L. 1999; amd. Sec. 57, Ch. 99, L. 2001; amd. Sec. 44, Ch. 329, L. 2005.

19-6-506. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 627, L. 1989; amd. Sec. 18, Ch. 16, L. 1991; amd. Secs. 1, 3, Ch. 735, L. 1991.

Part 6

Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-6-601. Disability retirement benefit. (1) Except as provided in subsections (2) and (3), a vested member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement.

(2) Except as provided in subsections (1) and (3), a vested or nonvested member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.6% of the member's highest average compensation for each year of service credit.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-6-505.

History: En. Sec. 14, Ch. 37, L. 1945; amd. Sec. 1, Ch. 109, L. 1947; R.C.M. 1947, 31-214; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 9, Ch. 278, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 125, Ch. 265, L. 1993; amd. Sec. 58, Ch. 99, L. 2001; amd. Sec. 64, Ch. 429, L. 2003; amd. Sec. 21, Ch. 178, L. 2013; amd. Sec. 8, Ch. 272, L. 2013.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.
Salary benefit to injured officer — discontinuance, 44-1-514.
Highway patrol officers — transfer of retirement contributions upon transfer after injury, 44-1-518.

19-6-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977; R.C.M. 1947, 31-222; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 10, Ch. 278, L. 1985; amd. Sec. 8, Ch. 196, L. 1989.

19-6-603. Renumbered 19-6-901. Code Commissioner, 1993.

19-6-604. Renumbered 19-6-902. Code Commissioner, 1993.

19-6-605 through 19-6-610 reserved.

19-6-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 597, L. 1981.

19-6-612. Medical examination of disability retiree — cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. Sec. 4, Ch. 597, L. 1981; amd. Sec. 2, Ch. 138, L. 1989; amd. Sec. 126, Ch. 265, L. 1993; amd. Sec. 15, Ch. 412, L. 1995; amd. Sec. 24, Ch. 370, L. 1997; amd. Sec. 49, Ch. 562, L. 1999; amd. Sec. 59, Ch. 99, L. 2001; amd. Sec. 23, Ch. 283, L. 2009; amd. Sec. 12, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.
Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.
Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.
Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.
Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.
Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.
Teachers' retirement — medical examination of disability retiree, 19-20-903.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-6-701. Repealed. Sec. 14, Ch. 278, L. 1985.

History: En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977; R.C.M. 1947, 31-228.

19-6-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977; R.C.M. 1947, 31-220(part).

19-6-703. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 25, Ch. 37, L. 1945; R.C.M. 1947, 31-225; amd. Sec. 7, Ch. 114, L. 1979.

19-6-704. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974; R.C.M. 1947, 31-224(1)(b); amd. Sec. 7, Ch. 114, L. 1979.

19-6-705. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977; R.C.M. 1947, 31-221; amd. Sec. 11, Ch. 464, L. 1985; amd. Sec. 9, Ch. 823, L. 1991.

19-6-706. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 31-221.1 by Sec. 4, Ch. 214, L. 1977; R.C.M. 1947, 31-221.1.

19-6-707. Minimum monthly benefit. (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710, 19-6-711, or 19-6-712 are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated.

History: **En. Sec. 1, Ch. 294, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 130, Ch. 265, L. 1993; amd. Sec. 20, Ch. 287, L. 1997; amd. Sec. 17, Ch. 128, L. 2007; amd. Sec. 9, Ch. 272, L. 2013.**

19-6-708. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 1, Ch. 14, L. 1987.**

19-6-709. *(Temporary)* **Supplemental benefits for certain retirees.** (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the fiscal year following the member's termination from service in the covered position.

(4) The amount statutorily appropriated under 19-6-410 must be distributed proportionally as a lump-sum benefit payment to each eligible recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. *(Terminates contingent upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991; sec. 14, Ch. 464, L. 2005.)*

History: **En. Sec. 1, Ch. 567, L. 1991; amd. Sec. 3, Ch. 735, L. 1991; amd. Sec. 131, Ch. 265, L. 1993; amd. Sec. 21, Ch. 287, L. 1997; amd. Sec. 21, Ch. 532, L. 1997; amd. Sec. 50, Ch. 562, L. 1999; amd. Sec. 60, Ch. 99, L. 2001; amd. Sec. 4, Ch. 191, L. 2001; amd. Sec. 108, Ch. 574, L. 2001; amd. Sec. 65, Ch. 429, L. 2003; amd. Sec. 45, Ch. 329, L. 2005; amd. Sec. 6, Ch. 464, L. 2005; amd. Sec. 19, Ch. 596, L. 2005.**

Compiler's Comments

Clarification of 2005 Contingent Termination: Section 73, Ch. 44, L. 2007, amended sec. 14, Ch. 464, L. 2005, a termination date section, in order to clarify that the amendments to 19-6-709, the insertion of the reference to [section 1] [19-6-410] in 17-7-502, and [section 1] [19-6-410] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709. Amendment effective October 1, 2007.

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

Cross-References

PERS — adjustment of benefit for certain members, 19-3-905.

Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.

Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-6-710. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), for members hired before July 1, 2013, on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in 19-6-1007(3) and subsections (2)(b) and (4) of this section, a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) If a member participated in the DROP and did not continue employment in a covered position after the member's participation, the guaranteed annual benefit adjustment provided for in this section must commence on January 1 immediately following the member's retirement and does not apply to the member's DROP benefit.

(5) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 51, Ch. 562, L. 1999; amd. Sec. 3, Ch. 62, L. 2001; amd. Sec. 8, Ch. 149, L. 2001; amd. Sec. 3, Ch. 309, L. 2001; amd. Sec. 10, Ch. 272, L. 2013; amd. Sec. 9, Ch. 258, L. 2015.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-6-711. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), for members hired before July 1, 2013, on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section.

History: **En. Sec. 9, Ch. 149, L. 2001; amd. Sec. 53, Ch. 114, L. 2003; amd. Sec. 11, Ch. 272, L. 2013.**

19-6-712. Guaranteed annual benefit adjustment for employees hired after July 1, 2013. (1) Subject to subsection (2), for employees hired on or after July 1, 2013, on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If the recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to more than a 1.5% annualized increase, then the benefit increase provided for under this section must be 0%.

(3) Except as provided for in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member first became an active member on or after July 1, 2013.

(4) The board shall adopt rules to administer the provisions of this section.

History: **En. Sec. 1, Ch. 272, L. 2013.**

Part 8
Service Credit

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

19-6-801. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-6-805, an eligible member may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (3) and subject to subsection (2)(b) and 19-6-805, a member may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member must have at least the following years of membership service to apply to purchase service credit under subsection (2)(a):

(i) for a member hired before July 1, 2013, 5 years; and

(ii) for a member hired on or after July 1, 2013, 10 years.

(3) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(4) To purchase service credit and membership service under this section:

(a) a member with at least 15 years of service credit who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) (i) a member with at least 5 years of membership service who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation;

(ii) a member with at least 10 years of membership service who is covered by 19-6-712 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: **En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977; R.C.M. 1947, 31-223(2); amd. Sec. 118, Ch. 265, L. 1993; Sec. 19-6-304, MCA 1991; redes. 19-6-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 287, L. 1997; amd. Sec. 28, Ch. 58, L. 1999; amd. Sec. 52, Ch. 562, L. 1999; amd. Sec. 61, Ch. 99, L. 2001; amd. Sec. 2, Ch. 26, L. 2003; amd. Sec. 2, Ch. 289, L. 2003; amd. Secs. 66, 122(2), Ch. 429, L. 2003; amd. Sec. 12, Ch. 272, L. 2013; amd. Sec. 10, Ch. 172, L. 2021.**

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — election to qualify previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-6-802. Repealed. Sec. 120, Ch. 429, L. 2003.

History: **En. Sec. 2, Ch. 145, L. 1981; amd. Sec. 2, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 119, Ch. 265, L. 1993; Sec. 19-6-305, MCA 1991; redes. 19-6-802 by Code Commissioner, 1993; amd. Sec. 16, Ch. 412, L. 1995; amd. Sec. 53, Ch. 51, L. 1999; amd. Sec. 53, Ch. 562, L. 1999; amd. Sec. 62, Ch. 99, L. 2001.**

19-6-803. Application to purchase law enforcement service performed in another state. (1) (a) Subject to subsection (1)(b) and 19-6-805, a member may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

(b) A member must have at least the following years of membership service to apply to purchase service credit under this section:

(i) for a member hired before July 1, 2013, 5 years; and

(ii) for a member hired on or after July 1, 2013, 10 years.

(2) To purchase this service credit, a member shall pay the actuarial cost of the service credit in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to purchase the service credit under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service credit.

(3) Service credit purchased under this section may not be used to qualify a member to purchase military service credit under 19-6-801.

(4) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service credit may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service credit, plus regular interest on that amount.

History: **En. Sec. 1, Ch. 142, L. 1991; amd. Sec. 120, Ch. 265, L. 1993; Sec. 19-6-306, MCA 1991; redes. 19-6-803 by Code Commissioner, 1993; amd. Sec. 29, Ch. 58, L. 1999; amd. Sec. 54, Ch. 562, L. 1999; amd. Sec. 63, Ch. 99, L. 2001; amd. Sec. 67, Ch. 429, L. 2003; amd. Sec. 13, Ch. 272, L. 2013.**

19-6-804. Application to purchase additional service. (1) (a) Subject to subsection (1)(b) and 19-6-805, a member may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

(b) A member must have at least the following years of membership service to apply to purchase additional service credit under this section:

(i) for a member hired before July 1, 2013, 5 years; and

(ii) for a member hired on or after July 1, 2013, 10 years.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement.

History: En. Sec. 2, Ch. 180, L. 1995; amd. Sec. 30, Ch. 58, L. 1999; amd. Sec. 64, Ch. 99, L. 2001; amd. Sec. 68, Ch. 429, L. 2003; amd. Sec. 14, Ch. 272, L. 2013.

19-6-805. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-6-801, 19-6-803, and 19-6-804.

History: En. Sec. 65, Ch. 99, L. 2001; amd. Sec. 69, Ch. 429, L. 2003.

19-6-806 through 19-6-809 reserved.

19-6-810. Absence because of illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not purchase service credit for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to purchase service credit pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence.

History: En. Sec. 55, Ch. 562, L. 1999; amd. Sec. 66, Ch. 99, L. 2001.

Part 9
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment of benefits to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-6-901. Survivorship benefits — employment-related death. (1) If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a survivorship benefit must be paid to the member's surviving spouse or dependent child in the same manner as provided for in 19-6-505(2) through (4).

(2) The retirement benefit must equal 50% of the highest average compensation of the member.

History: **En. Sec. 18, Ch. 37, L. 1945; amd. Sec. 11, Ch. 243, L. 1955; R.C.M. 1947, 31-218; amd. Sec. 7, Ch. 114, L. 1979; amd. Sec. 11, Ch. 278, L. 1985; amd. Sec. 127, Ch. 265, L. 1993; Sec. 19-6-603, MCA 1991; redes. 19-6-901 by Code Commissioner, 1993; amd. Sec. 67, Ch. 99, L. 2001.**

19-6-902. Survivorship benefits — death from other causes. If an active or inactive member dies before reaching retirement age, the member's surviving spouse or dependent child must be paid a survivorship benefit that is the actuarial equivalent of the early retirement benefit provided in 19-6-503, in the same manner as provided for in 19-6-505(2) through (4).

History: **En. Sec. 19, Ch. 37, L. 1945; amd. Sec. 12, Ch. 243, L. 1955; R.C.M. 1947, 31-219; amd. Sec. 12, Ch. 278, L. 1985; amd. Sec. 128, Ch. 265, L. 1993; Sec. 19-6-604, MCA 1991; redes. 19-6-902 by Code Commissioner, 1993; amd. Sec. 68, Ch. 99, L. 2001.**

19-6-903. Death payments in absence of survivors. If, after a member's death, a benefit is not paid pursuant to 19-6-505, 19-6-601, 19-6-901, or 19-6-902, then the member's designated beneficiary must be paid an amount equal to the member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: **En. Sec. 129, Ch. 265, L. 1993; amd. Sec. 69, Ch. 99, L. 2001.**

Part 10

Deferred Retirement Option Plan (DROP)

19-6-1001. Short title. This part may be cited as the "deferred retirement option plan" or "DROP".

History: **En. Sec. 1, Ch. 258, L. 2015.**

19-6-1002. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP account" means the member's accumulated monthly DROP accruals, plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP subject to the provisions of 19-6-1004.

(5) "Monthly DROP accrual" means the amount credited monthly to a participant's DROP account under 19-6-1005.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part.

History: **En. Sec. 2, Ch. 258, L. 2015.**

19-6-1003. Deferred retirement option plan established — rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the Internal Revenue Code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer this part.

History: **En. Sec. 3, Ch. 258, L. 2015.**

19-6-1004. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-6-501 is eligible for and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant in the DROP remains a member of the retirement system but may not receive membership service or service credit in the system for the duration of the participant's DROP period.

(5) If participation is interrupted by military service or disability before the participant retires, then the duration of the absence may not be included in calculating the DROP period.

History: **En. Sec. 4, Ch. 258, L. 2015.**

19-6-1005. Retirement system contributions — benefit payments to individual DROP accounts — investment returns. (1) (a) During a participant's DROP period, state contributions under 19-6-410 and employer contributions under 19-6-404 must continue to be made to the retirement system.

(b) Member contributions under 19-6-402 must be made to the member's DROP account.

(2) Each month during the DROP period, in addition to the contributions credited under subsection (1)(b), a participant's DROP account must be credited with the monthly benefit that would have been payable to the participant had the participant terminated employment and retired at the commencement of the DROP period, excluding any postretirement benefit adjustments that would have been applied to the benefit under part 7 of this chapter.

(3) Each fiscal yearend a participant's DROP account must be credited with the interest earned that year based on the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend.

History: En. Sec. 5, Ch. 258, L. 2015; amd. Sec. 18, Ch. 195, L. 2017.

19-6-1006. Survivorship benefit. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-6-1008, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the participant's death and the benefit the surviving spouse or dependent child would have received under 19-6-505 had the participant retired rather than elected to participate in the DROP.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the participant's death and the participant's accumulated contributions minus any benefits paid from the participant's account, including monthly DROP accruals.

(3) The benefit paid pursuant to this section must include interest credited to the participant's account every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at a time other than a fiscal yearend.

History: En. Sec. 6, Ch. 258, L. 2015.

19-6-1007. Employment and benefits after DROP period. (1) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-6-410, employer contributions under 19-6-404, and member contributions under 19-6-402 must continue to be made to the retirement system.

(2) A member who, after the end of the DROP period, continues employment in a covered position is:

(a) immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) upon terminating service, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment on that benefit for which the member is eligible under this chapter, subject to subsection (3);

(ii) a service retirement benefit based on the member's service credit and highest average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment on that benefit for which the member is eligible under part 7 of this chapter, subject to subsection (3); and

(iii) the member's DROP benefit.

(3) The postretirement benefit adjustment applied pursuant to subsections (2)(b)(i) and (2)(b)(ii) must commence on January 1 immediately following the member's retirement and does not apply to the member's DROP benefit.

History: En. Sec. 7, Ch. 258, L. 2015.

19-6-1008. Distribution of DROP benefit. (1) Upon termination of service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

History: **En. Sec. 8, Ch. 258, L. 2015.**

Part 11
Reemployment of Retired Members

19-6-1101. Reemployment of retired members — contributions required. (1) A retired member who returns to employment covered by the retirement system for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to employment covered by the retirement system for less than 480 hours in a calendar year may not become an active member. The retirement benefit of the retired member in covered employment must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-6-402 and 19-6-404.

(4) The employer of a retired member who returns to covered employment pursuant to subsection (2) shall contribute the amounts specified in 19-6-404.

History: **En. Sec. 19, Ch. 195, L. 2017.**

19-6-1102. Refunds and benefits for reemployed retired members. (1) A retired member who returns to active service pursuant to 19-6-1101(1) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon return to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-6-1101(1) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-6-502 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum monthly benefit increase pursuant to 19-6-707 when, immediately following the member's termination of service or retirement, a minimum monthly benefit increase is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment in January pursuant to 19-6-710, 19-6-711, or 19-6-712;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment under 19-6-712 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-6-1101(1):

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 7 of this chapter during the member's term of reemployment.

History: **En. Sec. 20, Ch. 195, L. 2017.**

CHAPTER 7
SHERIFFS' RETIREMENT

Part 1 — General Provisions

19-7-101. Definitions.
19-7-102. Sheriffs' retirement system established.
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19-7-104. Repealed.
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19-7-304. Repealed.
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19-7-306. Repealed.
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19-7-408. Repealed.
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Part 5 — Service Retirement Benefits

19-7-501. Eligibility for service retirement.
19-7-502. Retirement option.
19-7-503. Service retirement benefit.
19-7-504. Repealed.

Part 6 — Disability Retirement Benefits

19-7-601. Disability retirement benefit.
19-7-602. Repealed.
19-7-603. Repealed.
19-7-604. Renumbered 19-7-901.
19-7-605 through 19-7-610 reserved.
19-7-611. Repealed.
19-7-612. Medical examination of disability retiree — cancellation of benefit.

Part 7 — Postretirement Benefits and Benefit Increases

19-7-701. Renumbered 19-7-1001.
19-7-702. Repealed.
19-7-703. Repealed.
19-7-704. Repealed.
19-7-705. Repealed.
19-7-706. Repealed.
19-7-707. Repealed.
19-7-708. Repealed.
19-7-709. Repealed.
19-7-710. Repealed.
19-7-711. Guaranteed annual benefit adjustment.

Part 8 — Service Credit

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.
19-7-802. Repealed.
19-7-803. Application to purchase military service.

19-7-804. Application to purchase additional service.
19-7-805. Service purchase limitation.
19-7-806 through 19-7-809 reserved.
19-7-810. Repealed.

Part 9 — Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement.

Part 10 — Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits — designation of contingent annuitant.

Part 11 — Reemployment of Retired Members

19-7-1101. Reemployment of retired members — contributions required.
19-7-1102. Refunds and benefits for reemployed retired members.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Sheriff's Office, Title 7, ch. 32, part 21.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) per diems, maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set for detention officers by the Montana public safety officer standards and training council established in 2-15-2029.

(3) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average compensation during any 60 consecutive months of membership service; or

(iii) if a member has not served the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for compensatory leave, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator or as a gambling investigator.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and full-time deputy sheriff with the requisite professional certification and licensing.

History: Ap. p. Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977; Sec. 68-2602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; Sec. 68-2603, R.C.M. 1947; R.C.M. 1947, 68-2602, 68-2603; amd. Sec. 8, Ch. 114, L. 1979; amd. Sec. 9, Ch. 282, L. 1983; amd. Sec. 1, Ch. 401, L. 1985; amd. Sec. 5, Ch. 45, L. 1987; amd. Sec. 62, Ch. 370, L. 1987; amd. Sec. 9, Ch. 196, L. 1989; amd. Sec. 2, Ch. 261, L. 1993; amd. Sec. 134, Ch. 265, L. 1993; amd. Sec. 17, Ch. 412, L. 1995; amd. Sec. 31, Ch. 58, L. 1999; amd. Sec. 70, Ch. 99, L. 2001; amd. Sec. 10, Ch. 149, L. 2001; amd. Sec. 70, Ch. 429, L. 2003; amd. Sec. 1, Ch. 259, L. 2005; amd. Sec. 18, Ch. 128, L. 2007; amd. Sec. 14, Ch. 506, L. 2007; amd. Sec. 1, Ch. 155, L. 2011; amd. Sec. 6, Ch. 386, L. 2013; amd. Sec. 21, Ch. 195, L. 2017; amd. Sec. 13, Ch. 400, L. 2023; amd. Sec. 18, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 18, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-7-102. Sheriffs' retirement system established. A retirement plan is established and known as the sheriffs' retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. 68-2601 by Sec. 1, Ch. 178, L. 1974; R.C.M. 1947, 68-2601; amd. Sec. 6, Ch. 261, L. 1993; amd. Sec. 133, Ch. 265, L. 1993; amd. Sec. 56, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-7-103. Renumbered 19-2-905. Sec. 238, Ch. 265, L. 1993.

19-7-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(1), (3).

19-7-105. Short title. This chapter may be cited as "The Sheriffs' Retirement Act".

History: En. Sec. 132, Ch. 265, L. 1993.

19-7-106. Sheriffs' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the sheriffs' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 4, Ch. 2, L. 2023.

Part 2
Administration
(Repealed and Terminated)

19-7-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(1).

19-7-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 3, Ch. 235, L. 1981; amd. Sec. 15, Ch. 79, L. 1983; amd. Sec. 10, Ch. 282, L. 1983.

19-7-203. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) (a) Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs' retirement system.

(b) A detention officer who was a member of the public employees' retirement system on July 1, 2005, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.

(4) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 90 days after beginning the employment.

(5) Failure to make an election as provided in subsection (4) is considered an election to remain in the public employees' retirement system.

(6) A sheriff, investigator, or detention officer who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(7) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(8) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 68-2607 by Sec. 7, Ch. 178, L. 1974; amd. Sec. 3, Ch. 59, L. 1977; R.C.M. 1947, 68-2607(part); amd. Sec. 1, Ch. 81, L. 1987; amd. Sec. 3, Ch. 261, L. 1993; amd. Sec. 135, Ch. 265, L. 1993; amd. Sec. 1, Ch. 248, L. 1997; amd. Sec. 71, Ch. 99, L. 2001; amd. Sec. 71, Ch. 429, L. 2003; amd. Sec. 2, Ch. 259, L. 2005; amd. Sec. 46, Ch. 329, L. 2005; amd. Sec. 29, Ch. 99, L. 2011; amd. Sec. 18, Ch. 248, L. 2015.

Cross-References

Legislators — continued participation, 5-2-304.

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.

19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) After July 1, 2005, a detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention officers, except as provided in 19-7-301.

(4) This chapter may not be construed to deny any sheriff, investigator, or detention officer any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977; R.C.M. 1947, 68-2628; amd. Sec. 4, Ch. 261, L. 1993; amd. Sec. 136, Ch. 265, L. 1993; amd. Sec. 3, Ch. 259, L. 2005; amd. Sec. 30, Ch. 99, L. 2011.

Cross-References

The Public Employees' Retirement System Act, 19-3-101.
PERS — membership, Title 19, ch. 3, part 4.

19-7-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977; R.C.M. 1947, 68-2622.

19-7-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(1); amd. Sec. 3, Ch. 50, L. 1991.

19-7-305. Repealed. Sec. 7, Ch. 50, L. 1991.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974; R.C.M. 1947, 68-2615(2).

19-7-306. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977; R.C.M. 1947, 68-2616; amd. Sec. 3, Ch. 103, L. 1987.

19-7-307. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-308. Renumbered 19-7-801. Code Commissioner 1993.

19-7-309. Renumbered 19-7-802. Code Commissioner 1993.

19-7-310. Renumbered 19-7-803. Code Commissioner 1993.

19-7-311. Renumbered 19-7-804. Code Commissioner 1993.

19-7-312. Transfer of membership — purchase of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's previous service credit in the public employees' retirement system or in another system provided for in chapter 5, 6, 8, 9, or 13 of this title into the sheriffs' retirement system by paying the actuarial cost required under the provisions of 19-2-715.

History: En. Sec. 1, Ch. 261, L. 1993; amd. Sec. 72, Ch. 429, L. 2003; amd. Sec. 19, Ch. 128, L. 2007.

Part 4
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-7-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part).

19-7-402. Sources of money in fund. The following money must be paid to the board, which shall credit the payments to the pension trust fund:

(1) all contributions by the various counties as required by this chapter;
(2) all contributions by members as required by this chapter;
(3) all interest on and increase of the investments and money under this chapter; and

(4) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178, L. 1974; R.C.M. 1947, 68-2606; amd. Sec. 137, Ch. 265, L. 1993; amd. Sec. 57, Ch. 562, L. 1999.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Authority to invest funds in obligations of housing authority, 7-15-4505.
Separate investment funds, 17-6-203.
Permissible investments, 17-6-211.
Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-7-403. Member's contributions deducted. (1) (a) Subject to subsection (1)(b), each member's contribution is 10.495% of the member's compensation.

(b) The member's contribution required under this subsection (1) must be reduced to 9.245% on July 1 following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments that become effective after the valuation, is less than 25 years; and

(ii) reducing the member contributions and terminating the additional employer contributions pursuant to 19-7-404(4)(b) would not cause the system's amortization period as of the most recent actuarial valuation to exceed 25 years.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's highest average compensation in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-2608 by Sec. 8, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part); amd. Sec. 12, Ch. 464, L. 1985; amd. Sec. 138, Ch. 265, L. 1993; amd. Sec. 1, Ch. 162, L. 1995; amd. Sec. 2, Ch. 248, L. 1997; amd. Sec. 72, Ch. 99, L. 2001; amd. Sec. 47, Ch. 329, L. 2005; amd. Sec. 2, Ch. 328, L. 2017; amd. Sec. 11, Ch. 729, L. 2023; amd. Sec. 7, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 636, L. 2025. Amendment effective May 12, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-7-404. Employer contributions. (1) Each employer shall pay 9.535% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership.

(2) (a) If the required contributions under subsections (1) and (3)(a) exceed the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget,

levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.

(b) (i) A county may impose a mill levy to fund the employer contribution required under subsection (3)(b). The mill levy is not subject to 15-10-420(1) or to approval at an election under 15-10-425.

(ii) Each year prior to implementing a levy under subsection (2)(b)(i), after notice of the hearing given under 7-1-2121, a public hearing must be held regarding any proposed increase.

(iii) If a levy pursuant to this subsection (2)(b) is decreased or ceases to be levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

(3) Subject to subsection (4), each employer shall contribute to the system additional employer contributions equal to:

(a) 0.58% of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership; and

(b) 3% of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.

(4) (a) The board shall review annually the additional employee contributions provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contributions required under subsection (3) terminate on July 1 following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements that become effective after the valuation, is less than 25 years; and

(ii) terminating the additional employer contributions and reducing the member contributions pursuant to 19-7-403(1)(b) would not cause the amortization period to exceed 25 years.

(5) (a) Subject to subsection (6), each employer shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (5)(b) of the compensation paid to all of the employer's employees, except for those members properly excluded from membership.

(b) The percentage of compensation to be contributed under subsection (5)(a) is 0.1% for fiscal year 2026 and increases by 0.1% each fiscal year through fiscal year 2035. For fiscal years beginning after June 30, 2035, the percentage of compensation to be contributed under subsection (5)(a) is 1%.

(6) (a) The board shall review annually the additional employer contribution provided for under subsection (5) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (5) terminates on July 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (6)(b) and reducing the member contributions pursuant to 19-7-403(1)(b) would not cause the amortization period to exceed 25 years.

History: En. 68-2609 by Sec. 9, Ch. 178, L. 1974; R.C.M. 1947, 68-2609(part); amd. Sec. 15, Ch. 549, L. 1981; amd. Sec. 2, Ch. 393, L. 1985; amd. Sec. 5, Ch. 261, L. 1993; amd. Sec. 139, Ch. 265, L. 1993; amd. Sec. 2, Ch. 162, L. 1995; amd. Sec. 3, Ch. 248, L. 1997; amd. Sec. 109, Ch. 574, L. 2001; amd. Sec. 48, Ch. 329, L. 2005; amd. Sec. 5, Ch. 371, L. 2007; amd. Sec. 24, Ch. 283, L. 2009; amd. Sec. 3, Ch. 328, L. 2017; amd. Sec. 12, Ch. 729, L. 2023; amd. Sec. 3, Ch. 546, L. 2025; amd. Sec. 8, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 546, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 636, L. 2025. Amendment effective May 12, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-7-405. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2605(part); amd. Sec. 63, Ch. 370, L. 1987; amd. Sec. 3, Ch. 221, L. 1991.

19-7-406. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(2).

19-7-407. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977; R.C.M. 1947, 68-2627.

19-7-408. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977; R.C.M. 1947, 68-2604(3).

19-7-409. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-7-410. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and the workers' compensation program, the member's compensation reported by the employer is the same as if the member was in active service, and the member and employer contributions required by this chapter must be calculated and paid on that total compensation.

History: En. Sec. 3, Ch. 271, L. 2005; amd. Sec. 19, Ch. 248, L. 2015.

Part 5
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-7-501. Eligibility for service retirement. (1) (a) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member hired on or before June 30, 2023, who has completed at least 20 years of membership service is eligible for a nonforfeitable service retirement benefit under 19-7-503.

(b) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member hired on or after July 1, 2023, who has completed at least 20 years of membership service and reached 50 years of age is eligible for a nonforfeitable service retirement benefit under 19-7-503.

(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested member described in subsection (1)(a) or (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977; R.C.M. 1947, 68-2610; amd. Sec. 3, Ch. 53, L. 1983; amd. Sec. 2, Ch. 86, L. 1985; amd. Sec. 1, Ch. 122, L. 1989; amd. Sec. 10, Ch. 196, L. 1989; amd. Sec. 144, Ch. 265, L. 1993; amd. Sec. 3, Ch. 162, L. 1995; amd. Sec. 25, Ch. 370, L. 1997; amd. Sec. 73, Ch. 99, L. 2001; amd. Sec. 9, Ch. 240, L. 2013; amd. Sec. 13, Ch. 729, L. 2023.

19-7-502. Retirement option. A member with at least 5 but less than 20 years of membership service may retire with a retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The retirement benefit must be calculated to be the actuarial equivalent of the member's service retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974; R.C.M. 1947, 68-2611; amd. Sec. 9, Ch. 114, L. 1979; amd. Sec. 1, Ch. 105, L. 1981; amd. Sec. 2, Ch. 122, L. 1989; amd. Sec. 145, Ch. 265, L. 1993; amd. Sec. 4, Ch. 162, L. 1995; amd. Sec. 4, Ch. 248, L. 1997; amd. Sec. 73, Ch. 429, L. 2003.

19-7-503. Service retirement benefit. (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's highest average compensation for each year of service credit.

(2) When a retired member receiving an option 1 retirement benefit under 19-7-1001 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a retired member who elected an option 2 or 3 benefit under 19-7-1001 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(4) This section does not apply if the member was receiving a disability benefit. The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).

History: En. 68-2608, 68-2612 by Secs. 8, 12, Ch. 178, L. 1974; R.C.M. 1947, 68-2608(part), 68-2612; amd. Sec. 10, Ch. 114, L. 1979; amd. Sec. 3, Ch. 401, L. 1985; amd. Sec. 1, Ch. 78, L. 1991; amd. Sec. 146, Ch. 265, L. 1993; amd. Sec. 5, Ch. 162, L. 1995; amd. Sec. 5, Ch. 248, L. 1997; amd. Sec. 58, Ch. 562, L. 1999; amd. Sec. 74, Ch. 99, L. 2001; amd. Sec. 22, Ch. 178, L. 2013; amd. Sec. 20, Ch. 248, L. 2015.

19-7-504. Repealed. Sec. 8, Ch. 248, L. 1997.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977; R.C.M. 1947, 68-2614; amd. Sec. 2, Ch. 105, L. 1981; amd. Sec. 1, Ch. 116, L. 1991; amd. Sec. 147, Ch. 265, L. 1993; amd. Sec. 6, Ch. 162, L. 1995.

Part 6
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-7-601. Disability retirement benefit. (1) Except as provided in subsection (2), a vested member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement.

(2) A vested or nonvested member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

History: En. 68-2613 by Sec. 13, Ch. 178, L. 1974; R.C.M. 1947, 68-2613; amd. Sec. 148, Ch. 265, L. 1993; amd. Sec. 75, Ch. 99, L. 2001; amd. Sec. 74, Ch. 429, L. 2003; amd. Sec. 23, Ch. 178, L. 2013.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-7-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977; R.C.M. 1947, 68-2621; amd. Sec. 11, Ch. 196, L. 1989.

19-7-603. Repealed. Sec. 4, Ch. 401, L. 1985.

History: En. 68-2617 by Sec. 17, Ch. 178, L. 1974; R.C.M. 1947, 68-2617.

19-7-604. Renumbered 19-7-901. Code Commissioner, 1993.

19-7-605 through 19-7-610 reserved.

19-7-611. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 5, Ch. 597, L. 1981.

19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. Sec. 6, Ch. 597, L. 1981; amd. Sec. 149, Ch. 265, L. 1993; amd. Sec. 18, Ch. 412, L. 1995; amd. Sec. 26, Ch. 370, L. 1997; amd. Sec. 11, Ch. 36, L. 2005; amd. Sec. 25, Ch. 283, L. 2009; amd. Sec. 14, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement,19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 7
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

Exemption from taxes and legal process — exceptions, 19-2-1004.

PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.

Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.

Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.

Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-7-701. Renumbered 19-7-1001. Code Commissioner, 1993.

19-7-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977; R.C.M. 1947, 68-2619(part).

19-7-703. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. 68-2624 by Sec. 24, Ch. 178, L. 1974; R.C.M. 1947, 68-2624.**

19-7-704. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. 68-2623 by Sec. 23, Ch. 178, L. 1974; R.C.M. 1947, 68-2623(2).**

19-7-705. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977; R.C.M. 1947, 68-2620; amd. Sec. 13, Ch. 464, L. 1985; amd. Sec. 4, Ch. 50, L. 1991; amd. Sec. 10, Ch. 823, L. 1991.**

19-7-706. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977; R.C.M. 1947, 68-2620.1.**

19-7-707. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. Sec. 1, Ch. 14, L. 1987.**

19-7-708. Repealed. Sec. 38, Ch. 287, L. 1997.
History: **En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 153, Ch. 265, L. 1993.**

19-7-709. Repealed. Sec. 38, Ch. 287, L. 1997.
History: **En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 154, Ch. 265, L. 1993.**

19-7-710. Repealed. Sec. 38, Ch. 287, L. 1997.
History: **En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 155, Ch. 265, L. 1993.**

19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection (5) more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

(6) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 59, Ch. 562, L. 1999; amd. Sec. 4, Ch. 62, L. 2001; amd. Sec. 11, Ch. 149, L. 2001; amd. Sec. 4, Ch. 309, L. 2001; amd. Sec. 6, Ch. 371, L. 2007.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 8
Service Credit

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit and additional contributions, Title 19, ch. 2, part 7.

Management of benefit payments, Title 19, ch. 2, part 9.

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's office or from a county sheriff's office to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the optional retirement benefit, if any, elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be paid pursuant to 19-2-803. If there is more than one dependent child, upon a child no longer qualifying as dependent under 19-9-104, that child's pro rata benefits must be paid to the remaining dependent children.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary.

History: **En. Sec. 1, Ch. 122, L. 1979; amd. Sec. 2, Ch. 401, L. 1985; amd. Sec. 140, Ch. 265, L. 1993; Sec. 19-7-308, MCA 1991; redes. 19-7-801 by Code Commissioner, 1993; amd. Sec. 28, Ch. 370, L. 1997; amd. Sec. 76, Ch. 99, L. 2001; amd. Sec. 75, Ch. 429, L. 2003; amd. Sec. 12, Ch. 36, L. 2005; amd. Sec. 49, Ch. 329, L. 2005.**

Cross-References

Police retirement — statewide plan — transfer of assets and liabilities from prior plans, 19-9-205.

19-7-802. Repealed. Sec. 120, Ch. 429, L. 2003.

History: **En. Sec. 3, Ch. 145, L. 1981; amd. Sec. 3, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 141, Ch. 265, L. 1993; Sec. 19-7-309, MCA 1991; redes. 19-7-802 by Code Commissioner, 1993; amd. Sec. 19, Ch. 412, L. 1995; amd. Sec. 54, Ch. 51, L. 1999; amd. Sec. 60, Ch. 562, L. 1999; amd. Sec. 77, Ch. 99, L. 2001.**

19-7-803. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-7-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: **En. Sec. 1, Ch. 31, L. 1987; amd. Sec. 2, Ch. 214, L. 1991; amd. Sec. 142, Ch. 265, L. 1993; Sec. 19-7-310, MCA 1991; redes. 19-7-803 by Code Commissioner, 1993; amd. Sec. 32, Ch. 58, L. 1999; amd. Sec. 78, Ch. 99, L. 2001; amd. Sec. 3, Ch. 26, L. 2003; amd. Sec. 3, Ch. 289, L. 2003; amd. Secs. 76, 122(3), Ch. 429, L. 2003; amd. Sec. 11, Ch. 172, L. 2021.**

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — election to quality previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service credit in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

History: **En. Sec. 1, Ch. 214, L. 1991; amd. Sec. 143, Ch. 265, L. 1993; Sec. 19-7-311, MCA 1991; redes. 19-7-804 by Code Commissioner, 1993; amd. Sec. 33, Ch. 58, L. 1999; amd. Sec. 61, Ch. 562, L. 1999; amd. Sec. 79, Ch. 99, L. 2001; amd. Sec. 4, Ch. 26, L. 2003; amd. Sec. 4, Ch. 289, L. 2003; amd. Secs. 77, 122(4), Ch. 429, L. 2003.**

19-7-805. Service purchase limitation. A member may not purchase a combined total of more than 5 years of service credit under 19-7-803 and 19-7-804.

History: **En. Sec. 80, Ch. 99, L. 2001; amd. Sec. 78, Ch. 429, L. 2003.**

19-7-806 through 19-7-809 reserved.

19-7-810. Repealed. Sec. 4, Ch. 271, L. 2005.
History: En. Sec. 55, Ch. 562, L. 1999; amd. Sec. 81, Ch. 99, L. 2001.

Part 9
Survivorship Benefits and Death Payments

Part Cross-References
Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-7-901. Payments in case of death before retirement. If a member dies before retirement, the member's designated beneficiary may elect one of the following options for which the member qualified and for which the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a survivorship benefit equal to 2.5% of the member's highest average compensation for each year of service credit actuarially reduced from age 60 or the date on which the member would have completed 20 years of membership service, whichever provides a larger retirement benefit; or

(3) a survivorship benefit that is no less than one-half of the member's highest average compensation if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977; R.C.M. 1947, 68-2618; amd. Sec. 3, Ch. 105, L. 1981; amd. Sec. 2, Ch. 81, L. 1987; amd. Sec. 150, Ch. 265, L. 1993; Sec. 19-7-604, MCA 1991; redes. 19-7-901 by Code Commissioner, 1993; amd. Sec. 7, Ch. 162, L. 1995; amd. Sec. 6, Ch. 248, L. 1997; amd. Sec. 82, Ch. 99, L. 2001; amd. Sec. 24, Ch. 178, L. 2013.

Part 10
Optional Forms of Retirement Benefits

Part Cross-References
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after terminating service and within 30 days after the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977; R.C.M. 1947, 68-2626; amd. Sec. 2, Ch. 126, L. 1987; amd. Sec. 151, Ch. 265, L. 1993; Sec. 19-7-701, MCA 1991; redes. 19-7-1001 by Code Commissioner, 1993; amd. Sec. 3, Ch. 217, L. 1999; amd. Sec. 62, Ch. 562, L. 1999; amd. Sec. 83, Ch. 99, L. 2001; amd. Sec. 79, Ch. 429, L. 2003; amd. Sec. 50, Ch. 329, L. 2005; amd. Sec. 17, Ch. 284, L. 2009; amd. Sec. 31, Ch. 99, L. 2011; amd. Sec. 25, Ch. 178, L. 2013; amd. Sec. 21, Ch. 248, L. 2015.

Cross-References

PERS — optional forms of benefits, 19-3-1501.

Judges' retirement — optional forms of benefits, 19-5-701.

Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.

Teachers' retirement — optional allowances, 19-20-702.

Part 11
Reemployment of Retired Members

19-7-1101. Reemployment of retired members — contributions required. (1) A retired member who returns to employment covered by the retirement system for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to employment covered by the retirement system for less than 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member in covered employment must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-7-403 and 19-7-404.

(4) The employer of a retired member who is returning to covered employment pursuant to subsection (2) shall contribute the amounts specified in 19-7-404.

History: En. Sec. 152, Ch. 265, L. 1993; amd. Sec. 84, Ch. 99, L. 2001; amd. Sec. 20, Ch. 128, L. 2007; amd. Sec. 2, Ch. 239, L. 2013; amd. Sec. 22, Ch. 195, L. 2017; amd. Sec. 19, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 19, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-7-1102. Refunds and benefits for reemployed retired members. (1) A retired member who returns to active service pursuant to 19-7-1101(1) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon returning to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-7-1101(1) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-7-503 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-7-711 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-7-711 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-7-1101(1):

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided in part 7 of this chapter during the member's term of reemployment.

History: En. Sec. 23, Ch. 195, L. 2017.

CHAPTER 8
GAME WARDENS' AND PEACE OFFICERS' RETIREMENT

Part 1 — General Provisions

19-8-101. Definitions.
19-8-102. Game wardens' and peace officers' retirement system established.

19-8-103. Repealed.
19-8-104. Repealed.
19-8-105. Short title.
19-8-106. Game wardens' and peace officers' retirement system benefit policy statement.

Part 2 — Administration (Repealed and Terminated)

Part 3 — Eligibility, Membership, and Vesting

19-8-301. Membership — inactive vested members — inactive nonvested members.
19-8-302. Public employees' retirement system — transfer of membership.
19-8-303. Repealed.
19-8-304. Renumbered 19-8-901.
19-8-305. Repealed.
19-8-306. Renumbered 19-8-902.
19-8-307. Renumbered 19-8-903.
19-8-308. Transfer of service.

Part 4 — Creation and Management of Retirement Account (Repealed)

Part 5 — Contributions and Refunds

19-8-501. Contributions to pension trust fund.
19-8-502. Member's contribution.
19-8-503. Repealed.
19-8-504. Employer's contribution.
19-8-505. Repealed.

Part 6 — Service Retirement Benefits

19-8-601. Time of retirement.
19-8-602. Repealed.
19-8-603. Service retirement benefit.
19-8-604. Repealed.

Part 7 — Disability Retirement Benefits

19-8-701. Disability retirement benefit.
19-8-702. Repealed.
19-8-703. Renumbered 19-8-1001.
19-8-704. Renumbered 19-8-1002.
19-8-705 through 19-8-710 reserved.
19-8-711. Repealed.
19-8-712. Medical examination of disability retiree — cancellation of benefit.

Part 8 — Optional Forms of Benefit Payments

19-8-801. Optional forms of benefits — designation of contingent annuitant.
19-8-802. Repealed.
19-8-803. Repealed.
19-8-804. Repealed.
19-8-805. Repealed.
19-8-806. Repealed.
19-8-807. Repealed.
19-8-808. Renumbered 19-8-1101.
19-8-809. Renumbered 19-8-1102.
19-8-810. Renumbered 19-8-1103.
19-8-811 through 19-8-815 reserved.
19-8-816. Renumbered 19-8-1104.

Part 9 — Service Credit

19-8-901. Application to purchase military service.
19-8-902. Repealed.
19-8-903. Employment in United States government.
19-8-904. Application to purchase additional service.
19-8-905. Absence due to injury or illness.
19-8-906. Service purchase limitation.

Part 10 — Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death.
19-8-1002. Postretirement death payments.
19-8-1003. Nonduty-related death of active member.

Part 11 — Postretirement Benefits and Benefit Increases

19-8-1101. Repealed.
19-8-1102. Repealed.
19-8-1103. Repealed.

19-8-1104. Repealed.
19-8-1105. Guaranteed annual benefit adjustment.
19-8-1106 through 19-8-1109 reserved.
19-8-1110. Repealed.

Part 12 — Reemployment of Retired Members

19-8-1201. Reemployment of retired members — contributions required.
19-8-1202. Refunds and benefits for reemployed retired members.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Fish and game wardens, Title 87, ch. 1, part 5.

Part 1
General Provisions

19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) per diems, maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(2) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(3) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of membership service, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for compensatory leave, sick leave, annual leave, and banked holiday time paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make

arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state.

History: (1) thru (11)En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch. 332, L. 1977; Sec. 68-1401, R.C.M. 1947; (12)En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 68-1402, R.C.M. 1947; R.C.M. 1947, 68-1401, 68-1402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 592, L. 1981; amd. Sec. 11, Ch. 282, L. 1983; amd. Sec. 6, Ch. 45, L. 1987; amd. Sec. 12, Ch. 196, L. 1989; amd. Sec. 158, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 2, Ch. 223, L. 1997; amd. Sec. 34, Ch. 58, L. 1999; amd. Sec. 85, Ch. 99, L. 2001; amd. Sec. 12, Ch. 149, L. 2001; amd. Sec. 80, Ch. 429, L. 2003; amd. Sec. 3, Ch. 366, L. 2005; amd. Sec. 32, Ch. 99, L. 2011; amd. Sec. 1, Ch. 154, L. 2011; amd. Sec. 7, Ch. 386, L. 2013; amd. Sec. 24, Ch. 195, L. 2017; amd. Sec. 20, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 20, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-8-102. Game wardens' and peace officers' retirement system established. There is a retirement plan known as the game wardens' and peace officers' retirement system, which is governed by the provisions of chapter 2 and this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977; R.C.M. 1947, 68-1402.1; amd. Sec. 157, Ch. 265, L. 1993; amd. Sec. 3, Ch. 223, L. 1997; amd. Sec. 63, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-8-103. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 26, Ch. 130, L. 1963; R.C.M. 1947, 68-1426.

19-8-104. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-105. Short title. This chapter may be cited as "The Game Wardens' and Peace Officers' Retirement Act".

History: En. Sec. 156, Ch. 265, L. 1993; amd. Sec. 55, Ch. 51, L. 1999.

19-8-106. Game wardens' and peace officers' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the game wardens' and peace officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 5, Ch. 2, L. 2023.

Part 2
Administration
(Repealed and Terminated)

19-8-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(1).

19-8-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977; R.C.M. 1947, 68-1406(2).

19-8-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 235, L. 1981; amd. Sec. 12, Ch. 282, L. 1983.

19-8-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, must become and shall remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
(b) motor carrier officers employed by the department of transportation;
(c) campus security officers employed by the university system;
(d) wardens and deputy wardens employed by the department of corrections;
(e) corrections officers employed by the department of corrections;
(f) probation and parole officers employed by the department of corrections;
(g) stock inspectors and detectives employed by the department of livestock; and
(h) drill instructors employed by the department of corrections.

(2) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 159, Ch. 265, L. 1993; amd. Sec. 4, Ch. 223, L. 1997; amd. Sec. 2, Ch. 491, L. 1999; amd. Sec. 81, Ch. 429, L. 2003; amd. Sec. 51, Ch. 329, L. 2005; amd. Sec. 21, Ch. 128, L. 2007.

Cross-References

Legislators — continued participation, 5-2-304.

19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsection (3), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of service.

(2) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the game wardens' and peace officers' retirement system by filing a written election with the board no later than 90 days after transfer to the new position.

(3) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 90 days after transfer to the new position.

(4) Failure to make an election as provided in subsection (3) is considered an election to remain in the public employees' retirement system.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429; amd. Sec. 160, Ch. 265, L. 1993; amd. Sec. 5, Ch. 223, L. 1997; amd. Sec. 86, Ch. 99, L. 2001; amd. Sec. 1, Ch. 442, L. 2001; amd. Sec. 82, Ch. 429, L. 2003; amd. Sec. 22, Ch. 128, L. 2007; amd. Sec. 26, Ch. 178, L. 2013; amd. Sec. 22, Ch. 248, L. 2015.

Cross-References

Public employees' retirement system, Title 19, ch. 3.

19-8-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: (1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).

19-8-304. Renumbered 19-8-901. Code Commissioner, 1993.

19-8-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).**

19-8-306. Renumbered 19-8-902. Code Commissioner, 1993.

19-8-307. Renumbered 19-8-903. Code Commissioner, 1993.

19-8-308. Transfer of service. A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's service credit in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of 19-2-715.

History: **En. Sec. 1, Ch. 223, L. 1997; amd. Sec. 87, Ch. 99, L. 2001; amd. Sec. 83, Ch. 429, L. 2003.**

Part 4
Creation and Management of Retirement Account (Repealed)

19-8-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; R.C.M. 1947, 68-1408(part); amd. Sec. 13, Ch. 282, L. 1983.**

19-8-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(2).**

19-8-403. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(3); amd. Sec. 4, Ch. 221, L. 1991.**

19-8-404. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(4).**

19-8-405. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 28, Ch. 130, L. 1963; R.C.M. 1947, 68-1428; amd. Sec. 14, Ch. 282, L. 1983.**

19-8-406. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(5).**

Part 5
Contributions and Refunds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-8-501. Contributions to pension trust fund. The following must be paid to the board and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;
(2) all contributions by the state game wardens; and
(3) all interest on and increase of the investments and money in the pension trust fund.

History: **En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977; R.C.M. 1947, 68-1405(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 161, Ch. 265, L. 1993; amd. Sec. 64, Ch. 562, L. 1999.**

Cross-References
Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-8-502. Member's contribution. (1) Each member's contribution is 10.56% of the member's compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's highest average compensation in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; R.C.M. 1947, 68-1409(part); amd. Sec. 3, Ch. 249, L. 1985; amd. Sec. 14, Ch. 464, L. 1985; amd. Sec. 162, Ch. 265, L. 1993; amd. Sec. 23, Ch. 287, L. 1997; amd. Sec. 2, Ch. 98, L. 2001; amd. Sec. 88, Ch. 99, L. 2001; amd. Sec. 52, Ch. 329, L. 2005.

Cross-References
Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-8-503. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 130, L. 1963; R.C.M. 1947, 68-1416; amd. Sec. 2, Ch. 592, L. 1981; amd. Sec. 5, Ch. 50, L. 1991.

19-8-504. Employer's contribution. (1) The employer shall pay as employer contributions 10.56% of the compensation paid to all of the employer's employees, except those properly excluded from membership. The department of fish, wildlife, and parks shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section.

(2) (a) Subject to subsection (3), each employer shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (2)(b) of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.

(b) The percentage of compensation to be contributed under subsection (2)(a) is 0.1% for fiscal year 2026 and increases by 0.1% each fiscal year through fiscal year 2035. For fiscal years beginning after June 30, 2035, the percentage of contribution to be contributed under subsection (2)(a) is 1%.

(3) (a) The board shall review annually the additional employer contribution provided for under subsection (2) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (2) terminates on July 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (3)(b) would not cause the amortization period to exceed 25 years.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977; R.C.M. 1947, 68-1410(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 640, L. 1979; amd. Sec. 18, Ch. 549, L. 1981; amd. Sec. 19, Ch. 703, L. 1985; amd. Sec. 12, Ch. 557, L. 1987; amd. Sec. 1, Ch. 609, L. 1991; amd. Sec. 163, Ch. 265, L. 1993; amd. Sec. 3, Ch. 450, L. 1993; amd. Sec. 25, Ch. 509, L. 1995; amd. Sec. 6,

Ch. 223, L. 1997; amd. Sec. 24, Ch. 287, L. 1997; amd. Sec. 22, Ch. 532, L. 1997; amd. Sec. 53, Ch. 329, L. 2005; amd. Sec. 14, Ch. 729, L. 2023; amd. Sec. 4, Ch. 546, L. 2025; amd. Sec. 9, Ch. 636, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 546, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 9, Ch. 636, L. 2025. Amendment effective May 12, 2025.

Retroactive Applicability: Section 12, Ch. 636, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the employer contribution rates on or after July 1, 2023, for the highway patrol officers' retirement system, the sheriffs' retirement system, and the game wardens' and peace officers' retirement system."

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Payment of contributions by employers — accompanying reports — penalty, 19-2-506.
Department of Fish, Wildlife, and Parks — payment of salaries, per diem, and expenses, 87-1-602.

19-8-505. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

Part 6
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-8-601. Time of retirement. (1) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, the following members are eligible to receive a nonforfeitable service retirement benefit under 19-8-603:

(a) a member who has terminated service, completed at least 20 years of membership service, reached 50 years of age, and files a written application with the board; or

(b) a vested member who terminated service before completing 20 years of membership service and applies to begin receiving a service retirement benefit upon reaching 55 years of age.

(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in subsection (1)(a) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.

History: En. Sec. 11, Ch. 130, L. 1963; R.C.M. 1947, 68-1411; amd. Sec. 3, Ch. 592, L. 1981; amd. Sec. 4, Ch. 53, L. 1983; amd. Sec. 3, Ch. 86, L. 1985; amd. Sec. 1, Ch. 249, L. 1985; amd. Sec. 13, Ch. 196, L. 1989; amd. Sec 167, Ch. 265, L. 1993; amd. Sec. 29, Ch. 370, L. 1997; amd. Sec. 89, Ch. 99, L. 2001; amd. Sec. 33, Ch. 99, L. 2011; amd. Sec. 10, Ch. 240, L. 2013; amd. Sec. 21, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 21, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-8-602. Repealed. Sec. 8, Ch. 53, L. 1983.

History: En. Sec. 12, Ch. 130, L. 1963; R.C.M. 1947, 68-1412.

19-8-603. Service retirement benefit. The service retirement benefit is equal to 2.5% of the member's highest average compensation for each year of service credit.

History: (1)En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977; Sec. 68-1413, R.C.M. 1947; (2)En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977; Sec. 68-1409, R.C.M. 1947; R.C.M. 1947, 68-1409(part), 68-1413; amd. Sec. 2, Ch. 249, L. 1985; amd. Sec. 2, Ch. 139, L. 1989; amd. Sec. 168, Ch. 265, L. 1993; amd. Sec. 1, Ch. 98, L. 2001; amd. Sec. 90, Ch. 99, L. 2001.

19-8-604. Repealed. Sec. 39, Ch. 99, L. 2011.

History: En. Sec. 15, Ch. 130, L. 1963; amd. Sec. 10, Ch. 8, L. 1977; R.C.M. 1947, 68-1415; amd. Sec. 4, Ch. 592, L. 1981; amd. Sec. 5, Ch. 53, L. 1983; amd. Sec. 169, Ch. 265, L. 1993; amd. Sec. 7, Ch. 223, L. 1997; amd. Sec. 84, Ch. 429, L. 2003.

Part 7
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-8-701. Disability retirement benefit. (1) Except as provided in subsection (2), a vested member who becomes disabled must be granted a disability retirement benefit that is the actuarial equivalent of the service retirement benefit under 19-8-603 standing to the member's credit at the time of the member's disability retirement.

(2) A vested member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

History: En. Sec. 14, Ch. 130, L. 1963; amd. Sec. 20, Ch. 326, L. 1974; R.C.M. 1947, 68-1414; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 139, L. 1989; amd. Sec. 170, Ch. 265, L. 1993; amd. Sec. 8, Ch. 223, L. 1997; amd. Sec. 91, Ch. 99, L. 2001; amd. Sec. 85, Ch. 429, L. 2003; amd. Sec. 27, Ch. 178, L. 2013.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-8-702. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977; R.C.M. 1947, 68-1421; amd. Sec. 14, Ch. 196, L. 1989.

19-8-703. Renumbered 19-8-1001. Code Commissioner, 1993.

19-8-704. Renumbered 19-8-1002. Code Commissioner, 1993.

19-8-705 through 19-8-710 reserved.

19-8-711. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 7, Ch. 597, L. 1981.

19-8-712. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the

board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. Sec. 8, Ch. 597, L. 1981; amd. Sec. 3, Ch. 138, L. 1989; amd. Sec. 171, Ch. 265, L. 1993; amd. Sec. 20, Ch. 412, L. 1995; amd. Sec. 9, Ch. 223, L. 1997; amd. Sec. 30, Ch. 370, L. 1997; amd. Sec. 65, Ch. 562, L. 1999; amd. Sec. 92, Ch. 99, L. 2001; amd. Sec. 26, Ch. 283, L. 2009; amd. Sec. 15, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.
Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.
Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.
Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.
Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.
Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.
Teachers' retirement — medical examination of disability retiree, 19-20-903.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 8
Optional Forms of Benefit Payments

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after terminating service and within 30 days after the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: **En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977; R.C.M. 1947, 68-1427; amd. Sec. 3, Ch. 126, L. 1987; amd. Sec. 175, Ch. 265, L. 1993; amd. Sec. 4, Ch. 217, L. 1999; amd. Sec. 66, Ch. 562, L. 1999; amd. Sec. 93, Ch. 99, L. 2001; amd. Sec. 86, Ch. 429, L. 2003; amd. Sec. 54, Ch. 329, L. 2005; amd. Sec. 18, Ch. 284, L. 2009; amd. Sec. 34, Ch. 99, L. 2011; amd. Sec. 28, Ch. 178, L. 2013; amd. Sec. 23, Ch. 248, L. 2015.**

Cross-References

PERS — optional forms of benefits, 19-3-1501.

Judges' retirement — optional forms of benefits, 19-5-701.

Sheriffs' retirement — optional forms of benefits, 19-7-1001.

Teachers' retirement — optional allowances, 19-20-702.

19-8-802. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977; R.C.M. 1947, 68-1419(part).

19-8-803. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 24, Ch. 130, L. 1963; R.C.M. 1947, 68-1424.

19-8-804. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 23, Ch. 130, L. 1963; R.C.M. 1947, 68-1423(part).

19-8-805. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977; R.C.M. 1947, 68-1420; amd. Sec. 15, Ch. 464, L. 1985; amd. Sec. 11, Ch. 823, L. 1991.

19-8-806. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977; R.C.M. 1947, 68-1420.1.

19-8-807. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-8-808. Renumbered 19-8-1101. Code Commissioner, 1993.

19-8-809. Renumbered 19-8-1102. Code Commissioner, 1993.

19-8-810. Renumbered 19-8-1103. Code Commissioner, 1993.

19-8-811 through 19-8-815 reserved.

19-8-816. Renumbered 19-8-1104. Code Commissioner, 1993.

Part 9
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-8-901. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-8-906, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation.

History: En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977; R.C.M. 1947, 68-1422; (3), (4)En. Sec. 1, Ch. 119, L. 1983; amd. Sec. 164, Ch. 265, L. 1993; Sec. 19-8-304, MCA 1991; redes. 19-8-901 by Code Commissioner, 1993; amd. Sec. 67, Ch. 562, L. 1999; amd. Sec. 94, Ch. 99, L. 2001; amd. Sec. 5, Ch. 26, L. 2003; amd. Sec. 5, Ch. 289, L. 2003; amd. Secs. 87, 122(5), Ch. 429, L. 2003; amd. Sec. 12, Ch. 172, L. 2021.

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — credit for military service, 19-19-405.

Police retirement — local funds — election to qualify previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-8-902. Repealed. Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 4, Ch. 145, L. 1981; amd. Sec. 4, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 165, Ch. 265, L. 1993; Sec. 19-8-306, MCA 1991; redes. 19-8-902 by Code Commissioner, 1993; amd. Sec. 21, Ch. 412, L. 1995; amd. Sec. 10, Ch. 223, L. 1997; amd. Sec. 68, Ch. 562, L. 1999; amd. Sec. 95, Ch. 99, L. 2001.

19-8-903. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment in the retirement system under subsection (2) of this section if:

(a) the member has accumulated at least 5 years of membership service; and

(b) the member returns to full-time service for at least 1 year after completing employment in the United States government.

(2) A member who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) pay an amount equal to the normal employer and employee contributions plus interest within 2 years after the member's return to active state peace officer status.

(3) Compensation earned while on assignment to an agency of the United States government must be considered compensation for purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member's highest monthly compensation earned as a state peace officer.

History: En. Sec. 1, Ch. 260, L. 1981; amd. Sec. 166, Ch. 265, L. 1993; Sec. 19-8-307, MCA 1991; redes. 19-8-903 by Code Commissioner, 1993; amd. Sec. 11, Ch. 223, L. 1997; amd. Sec. 96, Ch. 99, L. 2001.

19-8-904. Application to purchase additional service. (1) Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified in the retirement system.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement.

History: En. Sec. 3, Ch. 180, L. 1995; amd. Sec. 35, Ch. 58, L. 1999; amd. Sec. 97, Ch. 99, L. 2001; amd. Sec. 88, Ch. 429, L. 2003.

19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credit for the absence unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence.

History: **En. Sec. 2, Ch. 370, L. 1997; amd. Sec. 36, Ch. 58, L. 1999; amd. Sec. 89, Ch. 429, L. 2003.**

19-8-906. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-8-901 and 19-8-904.

History: **En. Sec. 98, Ch. 99, L. 2001; amd. Sec. 90, Ch. 429, L. 2003.**

Part 10

Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-8-1001. Benefits upon employment-related death. If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a monthly survivorship benefit must be paid to the member's designated beneficiary equal to 50% of the highest average compensation of the member. If the deceased member has completed more than 25 years of service credit, the survivorship benefit must equal 2.5% of the member's highest average compensation for each year of service credit.

History: **En. Sec. 17, Ch. 130, L. 1963; amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2, Ch. 578, L. 1977; R.C.M. 1947, 68-1417; amd. Sec. 4, Ch. 139, L. 1989; amd. Sec. 172, Ch. 265, L. 1993; Sec. 19-8-703, MCA 1991; redes. 19-8-1001 by Code Commissioner, 1993; amd. Sec. 99, Ch. 99, L. 2001; amd. Sec. 24, Ch. 248, L. 2015.**

19-8-1002. Postretirement death payments. (1) When a retired member receiving an option 1 retirement benefit under 19-8-801 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(2) If a retired member who elected an option 2 or 3 retirement benefit under 19-8-801 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) This section does not apply if the member was receiving a disability benefit. The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).

History: **En. Sec. 18, Ch. 130, L. 1963; R.C.M. 1947, 68-1418; amd. Sec. 173, Ch. 265, L. 1993; Sec. 19-8-704, MCA 1991; redes. 19-8-1002 by Code Commissioner, 1993; amd. Sec. 25, Ch. 287, L. 1997; amd. Sec. 69, Ch. 562, L. 1999; amd. Sec. 29, Ch. 178, L. 2013; amd. Sec. 25, Ch. 248, L. 2015.**

19-8-1003. Nonduty-related death of active member. (1) If a vested member dies before reaching normal retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the service retirement benefit provided for in 19-8-603.

(2) If a nonvested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a lump-sum refund of the accumulated contributions standing to the member's credit at the time of the member's death.

History: **En. Sec. 174, Ch. 265, L. 1993; amd. Sec. 35, Ch. 99, L. 2011; amd. Sec. 25, Ch. 195, L. 2017; amd. Sec. 22, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 22, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Part 11
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.

19-8-1101. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 176, Ch. 265, L. 1993; Sec. 19-8-808, MCA 1991; redes. 19-8-1101 by Code Commissioner, 1993.

19-8-1102. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 177, Ch. 265, L. 1993; Sec. 19-8-809, MCA 1991; redes. 19-8-1102 by Code Commissioner, 1993.

19-8-1103. Repealed. Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 178, Ch. 265, L. 1993; Sec. 19-8-810, MCA 1991; redes. 19-8-1103 by Code Commissioner, 1993.

19-8-1104. Repealed. Sec. 44, Ch. 195, L. 2017.

History: En. Sec. 1, Ch. 139, L. 1989; amd. Sec. 179, Ch. 265, L. 1993; Sec. 19-8-816, MCA 1991; redes. 19-8-1104 by Code Commissioner, 1993.

19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection (5) more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

(6) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 70, Ch. 562, L. 1999; amd. Sec. 5, Ch. 62, L. 2001; amd. Sec. 13, Ch. 149, L. 2001; amd. Sec. 5, Ch. 309, L. 2001; amd. Sec. 7, Ch. 371, L. 2007.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-8-1106 through 19-8-1109 reserved.

19-8-1110. Repealed. Sec. 31, Ch. 128, L. 2007.

History: **En. Secs. 1, 2, Ch. 450, L. 1993.**

Part 12
Reemployment of Retired Members

19-8-1201. Reemployment of retired members — contributions required. (1) A retired member who returns to employment covered by the retirement system for 480 hours or more in a calendar year must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to employment covered by the retirement system for less than 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member in covered employment must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

(3) Retired members who return to active service pursuant to subsection (1) are subject to the employee and employer contributions set forth in 19-8-502 and 19-8-504.

(4) The employer of a retired member who is returning to covered employment pursuant to subsection (2) shall contribute the amounts specified in 19-8-504.

History: **En. Sec. 26, Ch. 195, L. 2017.**

19-8-1202. Refunds and benefits for reemployed retired members. (1) A retired member who returns to active service pursuant to 19-8-1201(1) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon return to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-8-1201(1) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-8-603 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-8-1105 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-8-1105 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-8-1201(1) following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided in part 11 of this chapter during the member's term of reemployment.

History: **En. Sec. 27, Ch. 195, L. 2017.**

CHAPTER 9
POLICE RETIREMENT — STATEWIDE PLAN

Part 1 — General Provisions

19-9-101. Short title.
19-9-102. Purpose — application of prior law.
19-9-103. Municipal police officers' retirement system established.
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19-9-105. Renumbered 19-9-205.
19-9-106. Renumbered 19-9-206.
19-9-107. Renumbered 19-9-207.
19-9-108. Repealed.
19-9-109. Municipal police officers' retirement system benefit policy statement.
19-9-110 and 19-9-111 reserved.
19-9-112. Termination of participation in retirement system or reduction of employer contributions.

Part 2 — Extension of Coverage by Local Government Employers

19-9-201. Repealed.
19-9-202. Repealed.
19-9-203. Repealed.
19-9-204. Terminated.
19-9-205. Transfer of assets and liabilities from prior plans.
19-9-206. Effect on members of prior plans.
19-9-207. Election to join retirement system — transfer of assets.
19-9-208. Repealed.
19-9-209. Taxing authority of employers.

Part 3 — Eligibility, Membership, and Vesting

19-9-301. Active membership — inactive vested member — inactive nonvested member.
19-9-302. Ineligibility for other retirement plans.
19-9-303. Repealed.
19-9-304. Repealed.
19-9-305. Repealed.

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19-9-402. Repealed.
19-9-403. Application to purchase military service.
19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation.
19-9-405. Repealed.
19-9-406. Service purchase limitation.
19-9-407 through 19-9-409 reserved.
19-9-410. Transfer to public employees' retirement system.
19-9-411. Application to purchase additional service.

Part 5 — Financial Management (Renumbered and Repealed)

Part 6 — Employee Contributions (Renumbered and Repealed)

Part 7 — Contributions

19-9-701. Repealed.
19-9-702. State contribution.
19-9-703. Employer contribution.
19-9-704. Renumbered 19-9-209.
19-9-705. Other money credited as employer contributions.
19-9-706. Contributions based on total compensation when member receives disability compensation.
19-9-707. Repealed.
19-9-708 and 19-9-709 reserved.
19-9-710. Member's contribution.

Part 8 — Service Retirement Benefits

19-9-801. Eligibility for service retirement — commencement of benefit.
19-9-802. Repealed.
19-9-803. Repealed.
19-9-804. Amount of service retirement benefit — continuation of benefit after death of member.

Part 9 — Disability Retirement Benefits

19-9-901. Repealed.
19-9-902. Eligibility for disability retirement.
19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member.
19-9-904. Termination of disability benefit.

19-9-905. Reinstatement upon termination of disability benefit.
19-9-906 through 19-9-910 reserved.
19-9-911. Renumbered 19-9-1101.
19-9-912. Renumbered 19-9-1102.

Part 10 — Postretirement Benefits and Benefit Increases

19-9-1001. Repealed.
19-9-1002. Repealed.
19-9-1003. Repealed.
19-9-1004. Renumbered 19-2-906.
19-9-1005. Repealed.
19-9-1006. Repealed.
19-9-1007. Minimum benefit adjustment.
19-9-1008. Repealed.
19-9-1009. Guaranteed annual benefit adjustment.
19-9-1010. Original election — guaranteed annual benefit adjustment.
19-9-1011. Repealed.
19-9-1012. Repealed.
19-9-1013. Extended election — guaranteed annual benefit adjustment.
19-9-1014 through 19-9-1019 reserved.
19-9-1020. Repealed.

Part 11 — Survivorship Benefits and Death Payments

19-9-1101. Preretirement death benefits.
19-9-1102. Payments in absence of spouse or child.

Part 12 — Deferred Retirement Option Plan (DROP)

19-9-1201. Short title.
19-9-1202. Definitions.
19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking.
19-9-1204. Eligibility — participation criteria — membership status — service interruptions.
19-9-1205. Retirement system contributions — benefit payments to individual DROP accounts — investment returns.
19-9-1206. Survivorship benefits.
19-9-1207. Employment and benefits after DROP period.
19-9-1208. Distribution of DROP benefit.

Part 13 — Reemployment of Retired Members

19-9-1301. Reemployment of members.
19-9-1302. Reemployment of retired members — contributions required.
19-9-1303. Refunds and benefits for reemployed retired members.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal police force, Title 7, ch. 32, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-9-101. Short title. This chapter may be cited as the "Municipal Police Officers' Retirement Act".

History: En. 11-1860 by Sec. 1, Ch. 456, L. 1977; R.C.M. 1947, 11-1860.

19-9-102. Purpose — application of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police retirement funds, the legislature finds and declares that the law regarding such funds, although in conflict with this chapter, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the above-mentioned statewide police reserve fund.

(2) The following may not be applied in any way to a city operating under the plan created by this chapter: 7-32-4107, 7-32-4120, 7-32-4131, and chapter 19 of this title.

History: En. 11-1892 by Sec. 33, Ch. 456, L. 1977; R.C.M. 1947, 11-1892; amd. Sec. 11, Ch. 114, L. 1979.

19-9-103. Municipal police officers' retirement system established. There is a retirement plan known as the municipal police officers' retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. 11-1862 by Sec. 3, Ch. 456, L. 1977; R.C.M. 1947, 11-1862; amd. Sec. 180, Ch. 265, L. 1993; amd. Sec. 71, Ch. 562, L. 1999.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.
Police retirement — local funds, Title 19, ch. 19.

19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave and annual leave;

(ii) per diems, maintenance, allowances, and expenses; or

(iii) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited secondary or postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) (a) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.

(b) Excess earnings limits must be applied to the calculation of the final average compensation pursuant to 19-2-1005(2).

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(11) "Survivor" means a surviving spouse or dependent child of the member.

History: (1), (3) thru (15), (17) thru (23)En. 11-1861 by Sec. 2, Ch. 456, L. 1977; Sec. 11-1861, R.C.M. 1947; (16)En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; Sec. 11-1839.1, R.C.M. 1947; R.C.M. 1947, 11-1839.1, 11-1861; amd. Sec. 1, Ch. 457, L. 1979; amd. Sec. 1, Ch. 186, L. 1983; amd. Sec. 15, Ch. 282, L. 1983; amd. Sec. 4, Ch. 86, L. 1985; amd. Sec. 1, Ch. 350, L. 1985; amd. Sec. 1, Ch. 178, L. 1991; amd. Sec. 1, Ch. 631, L. 1991; amd. Secs. 1, 9, Ch. 822, L. 1991; amd. Sec. 181, Ch. 265, L. 1993; amd. Sec. 1, Ch. 250, L. 1997; amd. Sec. 37, Ch. 58, L. 1999; amd. Sec. 100, Ch. 99, L. 2001; amd. Sec. 91, Ch. 429, L. 2003; amd. Sec. 8, Ch. 386, L. 2013; amd. Sec. 2, Ch. 152, L. 2025; amd. Sec. 23, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 152, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 23, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-9-105. Renumbered 19-9-205. Code Commissioner, 1993.

19-9-106. Renumbered 19-9-206. Code Commissioner, 1993.

19-9-107. Renumbered 19-9-207. Code Commissioner, 1993.

19-9-108. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(1), (3).

19-9-109. Municipal police officers' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the municipal police officers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 6, Ch. 2, L. 2023.

19-9-110 and 19-9-111 reserved.

19-9-112. Termination of participation in retirement system or reduction of employer contributions. (1) If an employer voluntarily terminates its participation in or contributions to the retirement system or significantly reduces the number of full-paid members it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request an actuarial valuation of the liabilities of the employer to the retirement system.

(2) Based on the actuarial valuation, the board may hold the employer liable for:

(a) the cost of the actuarial valuation to determine the employer's liabilities to the retirement system; and

(b) any excess accrued liabilities not previously funded by the employer.

History: En. Sec. 28, Ch. 195, L. 2017.

Part 2

Extension of Coverage by Local Government Employers

19-9-201. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(1), (2).

19-9-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1891 by Sec. 32, Ch. 456, L. 1977; R.C.M. 1947, 11-1891.

19-9-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1883 by Sec. 24, Ch. 456, L. 1977; R.C.M. 1947, 11-1883; amd. Sec. 5, Ch. 235, L. 1981; amd. Sec. 16, Ch. 282, L. 1983.

19-9-204. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

19-9-205. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, must be transferred to the pension trust fund.

History: En. 11-1880 by Sec. 21, Ch. 456, L. 1977; R.C.M. 1947, 11-1880; amd. Sec. 182, Ch. 265, L. 1993; Sec. 19-9-105, MCA 1991; redes. 19-9-205 by Code Commissioner, 1993.

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.

19-9-206. Effect on members of prior plans. (1) All provisions of this retirement system are effective as to a member whose retirement date occurred prior to July 1, 1977, except that the amount and mode of payment of the member's retirement benefit must remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan.

History: En. 11-1881 by Sec. 22, Ch. 456, L. 1977; R.C.M. 1947, 11-1881; amd. Sec. 183, Ch. 265, L. 1993; Sec. 19-9-106, MCA 1991; redes. 19-9-206 by Code Commissioner, 1993.

19-9-207. Election to join retirement system — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

(2) The trustees or other administrative head of the local plan as of the effective date of the election shall certify the proportion, if any, of the funds of the plan that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions for a period determined by the board. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of 30 years or less as determined by the board.

History: En. 11-1885 by Sec. 26, Ch. 456, L. 1977; R.C.M. 1947, 11-1885; amd. Sec. 1, Ch. 375, L. 1979; amd. Sec. 1, Ch. 286, L. 1983; amd. Sec. 184, Ch. 265, L. 1993; Sec. 19-9-107, MCA 1991; redes. 19-9-207 by Code Commissioner, 1993; amd. Sec. 1, Ch. 216, L. 2009.

19-9-208. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(4); amd. Sec. 2, Ch. 375, L. 1979; amd. Sec. 2, Ch. 286, L. 1983; amd. Sec. 1, Ch. 661, L. 1983; amd. Sec. 185, Ch. 265, L. 1993; Sec. 19-9-503, MCA 1991; redes. 19-9-208 by Code Commissioner, 1993.

19-9-209. Taxing authority of employers. For the purpose of making contributions required of a city under this chapter, the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue available for that purpose is sufficient to meet the demand.

History: En. 11-1884 by Sec. 25, Ch. 456, L. 1977; R.C.M. 1947, 11-1884; Sec. 19-9-704, MCA 1991; redes. 19-9-209 by Code Commissioner, 1993; amd. Sec. 110, Ch. 574, L. 2001.

Cross-References

Municipalities — all-purpose mill levy authorized, 7-6-4451.
Firefighters' unified retirement — taxing authority of employers, 19-13-214.
Firefighters' retirement — special tax levy for fund required, 19-18-503, 19-18-504.
Police retirement — local funds — city's contribution, 19-19-301.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2, part 6.
PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing an irrevocable written election with the board no later than 90 days after the date of the employer's election.

(2) Failure to make an election as provided in subsection (1)(c) is considered an election to remain in the public employees' retirement system.

(3) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(4) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(1), (2); amd. Sec. 186, Ch. 265, L. 1993; amd. Sec. 2, Ch. 250, L. 1997; amd. Sec. 101, Ch. 99, L. 2001; amd. Sec. 92, Ch. 429, L. 2003; amd. Sec. 55, Ch. 329, L. 2005; amd. Sec. 19, Ch. 284, L. 2009; amd. Sec. 26, Ch. 248, L. 2015.

Cross-References

Legislators — continued participation, 5-2-304.
Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.

19-9-302. Ineligibility for other retirement plans. An active member is not eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on the member's behalf, except the Social Security Act, while the member is eligible to be covered by this plan.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(3); amd. Sec. 234, Ch. 56, L. 2009.

Cross-References

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.
Social Security — plans for employees of political subdivisions, Title 19, ch. 1, part 5.
Employer to furnish itemized statement of deductions, 39-3-101.

19-9-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1864 by Sec. 5, Ch. 456, L. 1977; R.C.M. 1947, 11-1864.

19-9-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1873 by Sec. 14, Ch. 456, L. 1977; R.C.M. 1947, 11-1873; amd. Sec. 6, Ch. 50, L. 1991.

19-9-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1865 by Sec. 6, Ch. 456, L. 1977; R.C.M. 1947, 11-1865.

Part 4
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-9-401. Repealed. Sec. 97, Ch. 562, L. 1999.

History: En. 11-1863 by Sec. 4, Ch. 456, L. 1977; R.C.M. 1947, 11-1863(4); amd. Sec. 192, Ch. 265, L. 1993.

19-9-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part).

19-9-403. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-9-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active duty service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 2, Ch. 178, L. 1991; amd. Sec. 193, Ch. 265, L. 1993; amd. Sec. 38, Ch. 58, L. 1999; amd. Sec. 102, Ch. 99, L. 2001; amd. Sec. 6, Ch. 26, L. 2003; amd. Sec. 6, Ch. 289, L. 2003; amd. Secs. 93, 122(6), Ch. 429, L. 2003; amd. Sec. 13, Ch. 172, L. 2021.

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Police retirement — local funds — election to qualify previous military service, 19-19-406.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-9-404. Service under sheriffs' retirement system prior to or following city-county consolidation. A law enforcement officer who has combined service in the municipal police officers' retirement system and the sheriffs' retirement system because of a city-county consolidation, as provided in 19-7-801, is eligible for benefits as provided in 19-7-801.

History: En. Sec. 2, Ch. 122, L. 1979.

Cross-References

Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.

19-9-405. Repealed. Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 5, Ch. 145, L. 1981; amd. Sec. 5, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 194, Ch. 265, L. 1993; amd. Sec. 22, Ch. 412, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 72, Ch. 562, L. 1999; amd. Sec. 103, Ch. 99, L. 2001.

19-9-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-9-403 and 19-9-411.

History: En. Sec. 105, Ch. 99, L. 2001; amd. Sec. 95, Ch. 429, L. 2003.

19-9-407 through 19-9-409 reserved.

19-9-410. Transfer to public employees' retirement system. When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service credit had been normal employment covered under the public employees' retirement system.

History: En. Sec. 195, Ch. 265, L. 1993; amd. Sec. 96, Ch. 429, L. 2003.

19-9-411. Application to purchase additional service. (1) Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement.

History: En. Sec. 4, Ch. 180, L. 1995; amd. Sec. 106, Ch. 42, L. 1997; amd. Sec. 39, Ch. 58, L. 1999; amd. Sec. 104, Ch. 99, L. 2001; amd. Sec. 97, Ch. 429, L. 2003.

Part 5
Financial Management
(Renumbered and Repealed)

19-9-501. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1879 by Sec. 20, Ch. 456, L. 1977; R.C.M. 1947, 11-1879; amd. Sec. 17, Ch. 282, L. 1983.

19-9-502. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(4).

19-9-503. Renumbered 19-9-208. Code Commissioner, 1993.

19-9-504. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1882 by Sec. 23, Ch. 456, L. 1977; R.C.M. 1947, 11-1882.

19-9-505. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1888 by Sec. 29, Ch. 456, L. 1977; R.C.M. 1947, 11-1888.

Part 6
Employee Contributions
(Renumbered and Repealed)

19-9-601. Renumbered 19-9-710. Code Commissioner, 1993.

19-9-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(2).

19-9-603. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1868 by Sec. 9, Ch. 456, L. 1977; R.C.M. 1947, 11-1868; amd. Sec. 4, Ch. 103, L. 1987.

19-9-604. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 13, L. 1987.

Part 7
Contributions

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-9-701. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(1).

19-9-702. State contribution. The state shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The board shall notify the state auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 29.37% of compensation paid to members. The contributions are statutorily appropriated as provided in 17-7-502.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(2); amd. Sec. 4, Ch. 375, L. 1979; amd. Sec. 1, Ch. 250, L. 1981; amd. Sec. 21, Ch. 549, L. 1981; amd. Sec. 2, Ch. 661, L. 1983; amd. Sec. 20, Ch. 703, L. 1985; amd. Sec. 3, Ch. 631, L. 1991; amd. Sec. 188, Ch. 265, L. 1993; amd. Secs. 2, 8(3)(c), Ch. 445, L. 1997; amd. Sec. 23, Ch. 532, L. 1997; amd. Sec. 73, Ch. 562, L. 1999.

Cross-References

State Auditor, 2-15-601.
State Auditor as ex officio Commissioner of Insurance, 2-15-1903.
Insurance premium tax, 33-2-705.

19-9-703. Employer contribution. Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer shall pay as employer contributions 14.41% of the compensation paid to all of the employer's employees, except those properly excluded from membership.

History: En. 11-1866 by Sec. 7, Ch. 456, L. 1977; R.C.M. 1947, 11-1866(3); amd. Sec. 5, Ch. 375, L. 1979; amd. Sec. 22, Ch. 549, L. 1981; amd. Sec. 3, Ch. 661, L. 1983; amd. Sec. 4, Ch. 631, L. 1991; amd. Sec. 189, Ch. 265, L. 1993; amd. Secs. 2, 5, Ch. 620, L. 1993; amd. Sec. 4, Ch. 250, L. 1997; amd. Sec. 74, Ch. 562, L. 1999; amd. Sec. 56, Ch. 329, L. 2005.

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-9-704. Renumbered 19-9-209. Code Commissioner, 1993.

19-9-705. Other money credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a police officer, except when specifically allowed to be retained by the member by the member's employer, and all money withheld from the compensation of a member for violation of the rules of the member's employer must be paid to the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-9-703.

History: En. 11-1869 by Sec. 10, Ch. 456, L. 1977; R.C.M. 1947, 11-1869; amd. Sec. 190, Ch. 265, L. 1993.

Cross-References

Judges' retirement — payments into pension trust fund, 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund, 19-8-501.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.
Police retirement — local funds — gifts and money to be applied to fund, 19-19-304.

19-9-706. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and as benefits from the workers' compensation program under the provisions of 7-32-4132, the member's compensation reported by the employer is the same as if the member was in active service, and the member, employer, and state retirement contributions required by this chapter must be calculated and paid on that total compensation.

History: En. Sec. 4, Ch. 290, L. 1979; amd. Sec. 18, Ch. 282, L. 1983; amd. Sec. 191, Ch. 265, L. 1993; amd. Sec. 75, Ch. 562, L. 1999.

19-9-707. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 3, Ch. 138, L. 1991.

19-9-708 and 19-9-709 reserved.

19-9-710. Member's contribution. (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

(a) after June 30, 1975, but before July 1, 1979, is 7%;
(b) after June 30, 1979, but before July 1, 1997, is 8.5%; and
(c) on and after July 1, 1997, is 9%.

(2) A member covered under 19-9-1009, 19-9-1010, or 19-9-1013 shall contribute 9% of the member's compensation.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 11-1867 by Sec. 8, Ch. 456, L. 1977; R.C.M. 1947, 11-1867(1); amd. Sec. 3, Ch. 375, L. 1979; amd. Sec. 16, Ch. 464, L. 1985; amd. Sec. 2, Ch. 631, L. 1991; amd. Sec. 187, Ch. 265, L. 1993; amd. Sec. 1, Ch. 522, L. 1993; amd. Secs. 1, 5, Ch. 620, L. 1993; Sec. 19-9-601, MCA 1991; redes. 19-9-710 by Code Commissioner, 1993; amd. Sec. 27, Ch. 287, L. 1997; amd. Sec. 1, Ch. 463, L. 1999; amd. Sec. 57, Ch. 329, L. 2005; amd. Sec. 30, Ch. 178, L. 2013.

Cross-References

Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

Part 8
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-9-801. Eligibility for service retirement — commencement of benefit. (1) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member is eligible for a nonforfeitable service retirement benefit under 19-9-804 after terminating service if:

(a) the member has completed 20 years or more of membership service; or

(b) the member is vested and has reached 50 years of age.

(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in subsection (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.

History: En. 11-1889 by Sec. 30, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(part); amd. Sec. 6, Ch. 53, L. 1983; amd. Sec. 5, Ch. 86, L. 1985; amd. Sec. 15, Ch. 196, L. 1989; amd. Sec. 3, Ch. 178, L. 1991; amd. Sec. 5, Ch. 631, L. 1991; amd. Secs. 2, 9, Ch. 822, L. 1991; amd. Sec. 196, Ch. 265, L. 1993; amd. Sec. 5, Ch. 250, L. 1997; amd. Sec. 32, Ch. 370, L. 1997; amd. Sec. 106, Ch. 99, L. 2001; amd. Sec. 11, Ch. 240, L. 2013.

19-9-802. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1889, 11-1890 by Secs. 30, 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1889(2), 11-1890(part); amd. Sec. 6, Ch. 86, L. 1985; amd. Sec. 6, Ch. 631, L. 1991; amd. Secs. 3, 9, Ch. 822, L. 1991.

19-9-803. Repealed. Sec. 13, Ch. 86, L. 1985.

History: En. 11-1870 by Sec. 11, Ch. 456, L. 1977; R.C.M. 1947, 11-1870.

19-9-804. Amount of service retirement benefit — continuation of benefit after death of member. (1) A member who is eligible for service retirement must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) (a) Upon the death of a member receiving a service retirement benefit, the member's surviving spouse, if there is one, must receive a benefit equal to the amount of the member's benefit at the time of the member's death.

(b) If the member leaves one or more dependent children, then upon the member's death, if there is no surviving spouse, or upon the death of the surviving spouse, the member's surviving dependent child or children collectively if there are more than one must receive the same monthly payments that a surviving spouse would receive for as long as the child or one of the children remains a dependent child as defined in 19-9-104. The payments must be paid pursuant to 19-2-803. If there is more than one dependent child, upon a child no longer qualifying as dependent under 19-9-104, that child's pro rata payments must be made to the remaining dependent children.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part); amd. Sec. 7, Ch. 86, L. 1985; amd. Sec. 2, Ch. 350, L. 1985; amd. Sec. 2, Ch. 63, L. 1989; amd. Sec. 16, Ch. 196, L. 1989; amd. Sec. 7, Ch. 631, L. 1991; amd. Secs. 4, 9, Ch. 822, L. 1991; amd. Sec. 197, Ch. 265, L. 1993; amd. Sec. 2, Ch. 522, L. 1993; amd. Sec. 3, Ch. 620, L. 1993; amd. Sec. 58, Ch. 329, L. 2005.

Part 9
Disability Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-9-901. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1878 by Sec. 19, Ch. 456, L. 1977; R.C.M. 1947, 11-1878(3); amd. Sec. 9, Ch. 597, L. 1981.

19-9-902. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to a disability retirement benefit, regardless of the length of the member's service, commencing on the day following the member's termination from employment.

History: En. 11-1871 by Sec. 12, Ch. 456, L. 1977; R.C.M. 1947, 11-1871; amd. Sec. 1, Ch. 389, L. 1979; amd. Sec. 5, Ch. 822, L. 1991; amd. Sec. 198, Ch. 265, L. 1993; amd. Sec. 59, Ch. 329, L. 2005.

Cross-References

Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's final average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a line of duty disability retirement benefit equal to one-half of the member's final average compensation; or

(b) after completing 20 years or more of membership service must receive a line of duty disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-9-804.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(4), (5); amd. Sec. 3, Ch. 350, L. 1985; amd. Sec. 8, Ch. 631, L. 1991; amd. Secs. 6, 9, Ch. 822, L. 1991; amd. Sec. 199, Ch. 265, L. 1993; amd. Sec. 98, Ch. 429, L. 2003; amd. Sec. 2, Ch. 596, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 596, L. 2025. Amendment effective May 13, 2025.

Retroactive Applicability: Section 5, Ch. 596, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to members of the municipal police officers' retirement system and the firefighters' unified retirement system who become disabled as a direct result of the member's service in the line of duty on or before January 1, 2025."

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-9-904. Termination of disability benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time.

(2) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(1); amd. Sec. 10, Ch. 597, L. 1981; amd. Sec. 200, Ch. 265, L. 1993; amd. Sec. 23, Ch. 412, L. 1995; amd. Sec. 33, Ch. 370, L. 1997; amd. Sec. 27, Ch. 283, L. 2009; amd. Sec. 16, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-9-905. Reinstatement upon termination of disability benefit. (1) (a) Except as provided in subsection (1)(b), a retired member whose disability retirement benefit is canceled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in a comparable pay and benefit category with duties within the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been canceled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly.

History: En. 11-1872 by Sec. 13, Ch. 456, L. 1977; R.C.M. 1947, 11-1872(2), (3); amd. Sec. 11, Ch. 597, L. 1981; amd. Sec. 201, Ch. 265, L. 1993; amd. Sec. 34, Ch. 370, L. 1997; amd. Sec. 60, Ch. 329, L. 2005.

19-9-906 through 19-9-910 reserved.

19-9-911. Renumbered 19-9-1101. Code Commissioner, 1993.

19-9-912. Renumbered 19-9-1102. Code Commissioner, 1993.

Part 10
Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Firefighters' unified retirement — minimum benefits and benefit increases, Title 19, ch. 13, part 10.

19-9-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1890 by Sec. 31, Ch. 456, L. 1977; R.C.M. 1947, 11-1890(part).

19-9-1002. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1874 by Sec. 15, Ch. 456, L. 1977; R.C.M. 1947, 11-1874.

19-9-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1886 by Sec. 27, Ch. 456, L. 1977; R.C.M. 1947, 11-1886(2).

19-9-1004. Renumbered 19-2-906. Sec. 238, Ch. 265, L. 1993.

19-9-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1876 by Sec. 17, Ch. 456, L. 1977; R.C.M. 1947, 11-1876; amd. Sec. 17, Ch. 464, L. 1985; amd. Sec. 12, Ch. 823, L. 1991.

19-9-1006. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 11-1877 by Sec. 18, Ch. 456, L. 1977; R.C.M. 1947, 11-1877; amd. Sec. 12, Ch. 114, L. 1979.

19-9-1007. Minimum benefit adjustment. (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a new police officer who has been confirmed pursuant to 7-32-4113 has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the board shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively.

History: En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 13, Ch. 114, L. 1979; amd. Sec. 2, Ch. 457, L. 1979; amd. Sec. 2, Ch. 250, L. 1981; amd. Sec. 53, Ch. 566, L. 1981; amd. Sec. 71, Ch. 575, L. 1981; amd. Sec. 4, Ch. 186, L. 1983; amd. Sec. 21, Ch. 703, L. 1985; amd. Sec. 1, Ch. 633, L. 1991; amd. Sec. 204, Ch. 265, L. 1993; amd. Sec. 28, Ch. 287, L. 1997; amd. Sec. 3, Ch. 445, L. 1997; amd. Sec. 76, Ch. 562, L. 1999; amd. Sec. 33, Ch. 7, L. 2001; amd. Sec. 31, Ch. 178, L. 2013.

Cross-References
PERS — adjustment of benefit for certain members, 19-3-905.
Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — local funds — supplement to certain pensions, 19-19-506.

19-9-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 14, Ch. 114, L. 1979.

19-9-1009. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 77, Ch. 562, L. 1999; amd. Sec. 6, Ch. 62, L. 2001; amd. Sec. 14, Ch. 149, L. 2001; amd. Sec. 6, Ch. 309, L. 2001.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

19-9-1010. Original election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 1999; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2000, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 remains valid. The decision of a member who elected not to participate under 19-9-1009 may be reversed under this section.

History: **En. Sec. 2, Ch. 463, L. 1999; amd. Sec. 15, Ch. 149, L. 2001; amd. Sec. 7, Ch. 309, L. 2001.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-9-1011. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 1, Ch. 710, L. 1985; amd. Sec. 1, Ch. 93, L. 1987; amd. Sec. 1, Ch. 282, L. 1989; amd. Sec. 8, Ch. 822, L. 1991.**

19-9-1012. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 1, Ch. 14, L. 1987.**

19-9-1013. Extended election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 or 19-9-1010 remains valid. The decision of a member who elected not to participate under 19-9-1009 and 19-9-1010 may be reversed under this section.

History: **En. Sec. 16, Ch. 149, L. 2001; amd. Sec. 54, Ch. 114, L. 2003.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-9-1014 through 19-9-1019 reserved.

19-9-1020. Repealed. Sec. 30, Ch. 248, L. 2015.

History: **En. Sec. 1, Ch. 391, L. 2001; amd. Sec. 3, Ch. 391, L. 2001.**

Part 11
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-9-1101. Preretirement death benefits. (1) On the death of an active member, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, payable as provided in 19-9-804(2). If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of service credit.

(2) On the death of an inactive member, the member's surviving spouse or dependent child is eligible for a lump-sum refund of the accumulated contributions standing to the member's credit at the time of the member's death.

History: **En. 11-1875 by Sec. 16, Ch. 456, L. 1977; R.C.M. 1947, 11-1875; amd. Sec. 3, Ch. 186, L. 1983; amd. Sec. 4, Ch. 350, L. 1985; amd. Sec. 7, Ch. 822, L. 1991; amd. Sec. 202, Ch. 265, L. 1993; amd. Sec. 4, Ch. 620, L. 1993; Sec. 19-9-911, MCA 1991; redes. 19-9-1101 by Code Commissioner, 1993; amd. Sec. 107, Ch. 42, L. 1997; amd. Sec. 78, Ch. 562, L. 1999; amd. Sec. 107, Ch. 99, L. 2001; amd. Sec. 28, Ch. 283, L. 2009; amd. Sec. 24, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 24, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-9-1102. Payments in absence of spouse or child. If, after a member dies, a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: **En. Sec. 2, Ch. 186, L. 1983; amd. Sec. 203, Ch. 265, L. 1993; Sec. 19-9-912, MCA 1991; redes. 19-9-1102 by Code Commissioner, 1993; amd. Sec. 79, Ch. 562, L. 1999; amd. Sec. 108, Ch. 99, L. 2001.**

Part 12

Deferred Retirement Option Plan (DROP)

19-9-1201. Short title. This part may be cited as the deferred retirement option plan or DROP.

History: **En. Sec. 1, Ch. 514, L. 2001.**

19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP account" means the member's accumulated monthly DROP accruals, including any postretirement adjustments, plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated service and retired.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part.

History: **En. Sec. 2, Ch. 514, L. 2001; amd. Sec. 99, Ch. 429, L. 2003; amd. Sec. 61, Ch. 329, L. 2005; amd. Sec. 23, Ch. 128, L. 2007.**

19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the Internal Revenue Code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer this part.

History: **En. Sec. 3, Ch. 514, L. 2001.**

19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801(1)(a) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or other temporary absence from work and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

(6) Subject to the provisions of this section, a member who was eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003, and who elects to participate in the DROP on or before October 1, 2003, may include within the member's DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003.

History: En. Sec. 4, Ch. 514, L. 2001; amd. Sec. 55, Ch. 114, L. 2003; amd. Sec. 1, Ch. 261, L. 2003; amd. Sec. 100, Ch. 429, L. 2003; amd. Sec. 29, Ch. 195, L. 2017.

19-9-1205. Retirement system contributions — benefit payments to individual DROP accounts — investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a monthly DROP accrual and the contribution to the participant's DROP account.

History: En. Sec. 5, Ch. 514, L. 2001; amd. Sec. 101, Ch. 429, L. 2003; amd. Sec. 24, Ch. 128, L. 2007.

19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the member's death and the benefit the surviving spouse or dependent child would have received under 19-9-804 had the member retired rather than elected to participate in the DROP.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the member's death and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP payments.

(3) The benefit paid pursuant to this section must include interest credited to the participant's account as follows:

(a) through June 30, 2009, interest must be credited every fiscal yearend at a rate reflecting the retirement system's annual investment earnings for the applicable fiscal year;

(b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend.

History: En. Sec. 6, Ch. 514, L. 2001; amd. Sec. 102, Ch. 429, L. 2003; amd. Sec. 25, Ch. 128, L. 2007; amd. Sec. 20, Ch. 284, L. 2009; amd. Sec. 27, Ch. 248, L. 2015.

19-9-1207. Employment and benefits after DROP period. (1) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating service, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit.

History: En. Sec. 7, Ch. 514, L. 2001; amd. Sec. 103, Ch. 429, L. 2003; amd. Sec. 62, Ch. 329, L. 2005; amd. Sec. 30, Ch. 195, L. 2017.

19-9-1208. Distribution of DROP benefit. (1) Upon termination of service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest credited to the participant's account as follows:

(a) through June 30, 2009, interest must be credited every fiscal yearend at a rate reflecting the retirement system's annual investment earnings for the applicable fiscal year;

(b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend.

History: En. Sec. 8, Ch. 514, L. 2001; amd. Sec. 104, Ch. 429, L. 2003; amd. Sec. 63, Ch. 329, L. 2005; amd. Sec. 21, Ch. 284, L. 2009.

Part 13
Reemployment of Retired Members

19-9-1301. Reemployment of members. (1) If a retired member with less than 20 years of service in the retirement system who is at least 50 years of age returns to employment covered by the retirement system before July 1, 2017, on reemployment:

(a) the member's retirement benefit payments must cease;

(b) the member becomes a vested active member;

(c) the member shall repay the retirement system the amount of any retirement benefit received, plus interest at the actuarially assumed rate of return on the system's investments; and

(d) on subsequent retirement, the member's retirement benefit must be calculated based on the member's total service under the system.

(2) If a retired member with 20 or more years of service returns to employment covered by the retirement system before July 1, 2017, on reemployment:

(a) the member's retirement benefit payments must cease;

(b) the member becomes a vested active member;

(c) on subsequent retirement, the member's retirement benefit payable prior to the reemployment must resume; and

(d) the member is entitled to an additional new retirement benefit that is calculated based on the member's new service credit earned and final average compensation after the reemployment.

(3) If a member who is not a retired member returns to employment covered by the retirement system, on reemployment, the member becomes an active member and continues to accrue membership service or service credit as if there had been no break in service.

History: En. Sec. 1, Ch. 217, L. 2015; amd. Sec. 31, Ch. 195, L. 2017.

19-9-1302. Reemployment of retired members — contributions required. (1) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system on or after July 1, 2017, for a period not to exceed 480 hours in any calendar year without returning to active service. The retirement benefit of a retired member in covered employment must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

(2) If a retired member returns to employment covered by the retirement system on or after July 1, 2017, for more than 480 hours in a calendar year, the member returns to active service and the member's retirement benefit payments must cease until the member again terminates employment and retires.

(3) For each retired member who returns to covered employment pursuant to subsection (1), the employer shall contribute the amount specified in 19-9-703 and the state shall contribute the amount specified in 19-9-702.

(4) The earned compensation of retired members who return to active service pursuant to subsection (2) is subject to the state, employer, and employee contributions set forth in 19-9-702, 19-9-703, and 19-9-710.

History: En. Sec. 32, Ch. 195, L. 2017.

19-9-1303. Refunds and benefits for reemployed retired members. (1) A retired member who returns to active service pursuant to 19-9-1302(2) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon returning to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-9-1302(2) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-9-801 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum monthly adjustment pursuant to 19-9-1007 when, immediately following the member's termination of service or retirement, whichever is applicable, a minimum monthly adjustment is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment pursuant to 19-9-1009, 19-9-1010, or 19-9-1013 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-9-1013 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-9-1302(2) following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 10 of this chapter during the member's term of reemployment.

History: En. Sec. 33, Ch. 195, L. 2017.

CHAPTER 10
POLICE RETIREMENT — LOCAL FUNDS
(Renumbered)

Part 1 — General Provisions (Renumbered)

Part 2 — Management of Police Retirement Funds (Renumbered)

Part 3 — Contributions to Funds (Renumbered)

Part 4 — Eligibility for Retirement Benefits (Renumbered)

Part 5 — Benefits (Renumbered)

Part 1
General Provisions
(Renumbered)

19-10-101. Renumbered 19-19-101. Code Commissioner 1993.

Part 2
Management of Police Retirement Funds
(Renumbered)

19-10-201. Renumbered 19-19-201. Code Commissioner 1993.

19-10-202. Renumbered 19-19-202. Code Commissioner 1993.

19-10-203. Renumbered 19-19-203. Code Commissioner 1993.

19-10-204. Renumbered 19-19-204. Code Commissioner 1993.

19-10-205. Renumbered 19-19-205. Code Commissioner 1993.

Part 3
Contributions to Funds
(Renumbered)

19-10-301. Renumbered 19-19-301. Code Commissioner 1993.

19-10-302. Renumbered 19-19-302. Code Commissioner 1993.

19-10-303. Renumbered 19-19-303. Code Commissioner 1993.

19-10-304. Renumbered 19-19-304. Code Commissioner 1993.

19-10-305. Renumbered 19-19-305. Code Commissioner 1993.

Part 4
Eligibility for Retirement Benefits
(Renumbered)

19-10-401. Renumbered 19-19-401. Code Commissioner 1993.

19-10-402. Renumbered 19-19-402. Code Commissioner 1993.

19-10-403. Renumbered 19-19-403. Code Commissioner 1993.

19-10-404. Renumbered 19-19-404. Code Commissioner 1993.

19-10-405. Renumbered 19-19-405. Code Commissioner 1993.

19-10-406. Renumbered 19-19-406. Code Commissioner 1993.

Part 5
Benefits
(Renumbered)

19-10-501. Renumbered 19-19-501. Code Commissioner 1993.

19-10-502. Renumbered 19-19-502. Code Commissioner 1993.

19-10-503. Renumbered 19-19-503. Code Commissioner 1993.

19-10-504. Renumbered 19-19-504. Code Commissioner 1993.

19-10-505. Renumbered 19-19-505. Code Commissioner 1993.

19-10-506. Renumbered 19-19-506. Code Commissioner 1993.

CHAPTER 11
FIREFIGHTERS' RETIREMENT
(Renumbered and Repealed)

Part 1 — General Provisions (Renumbered)

Part 2 — Management and Protection of Fund (Renumbered)

Part 3 — Management — First and Second Class Cities (Repealed)

Part 4 — Management of Association — Investment of Fund (Renumbered)

Part 5 — Contributions to Fund (Renumbered)

Part 6 — Benefits (Renumbered)

Part 1
General Provisions (Renumbered)

19-11-101. Renumbered 19-18-101. Code Commissioner, 1993.

19-11-102. Renumbered 19-18-102. Code Commissioner, 1993.

19-11-103. Renumbered 19-18-103. Code Commissioner, 1993.

19-11-104. Renumbered 19-18-104. Code Commissioner, 1993.

19-11-105. Renumbered 19-18-105. Code Commissioner, 1993.

19-11-106. Renumbered 19-18-106. Code Commissioner, 1993.

19-11-107. Renumbered 19-18-107. Code Commissioner, 1993.

Part 2
Management and Protection of Fund (Renumbered)

19-11-201. Renumbered 19-18-201. Code Commissioner, 1993.

19-11-202. Renumbered 19-18-202. Code Commissioner, 1993.

19-11-203. Renumbered 19-18-203. Code Commissioner, 1993.

19-11-204. Renumbered 19-18-204. Code Commissioner, 1993.

19-11-205. Renumbered 19-18-205. Code Commissioner, 1993.

19-11-206. Renumbered 19-18-206. Code Commissioner, 1993.

19-11-207. Renumbered 19-18-207. Code Commissioner, 1993.

19-11-208. Renumbered 19-18-208. Code Commissioner, 1993.

Part 3
Management — First and Second Class Cities (Repealed)

19-11-301. Repealed. Sec. 62, Ch. 566, L. 1981.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(a); amd. Sec. 1, Ch. 270, L. 1981.

19-11-302. Repealed. Sec. 62, Ch. 566, L. 1981.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(c).

19-11-303. Repealed. Sec. 62, Ch. 566, L. 1981.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(3)(b); amd. Sec. 7, Ch. 274, L. 1981.

Part 4
Management of Association — Investment of Fund (Renumbered)

19-11-401. Renumbered 19-18-401. Code Commissioner, 1993.

19-11-402. Renumbered 19-18-402. Code Commissioner, 1993.

19-11-403. Renumbered 19-18-403. Code Commissioner, 1993.

Part 5
Contributions to Fund (Renumbered)

19-11-501. Renumbered 19-18-501. Code Commissioner, 1993.

19-11-502. Renumbered 19-18-502. Code Commissioner, 1993.

19-11-503. Renumbered 19-18-503. Code Commissioner, 1993.

19-11-504. Renumbered 19-18-504. Code Commissioner, 1993.

19-11-505 through 19-11-510 reserved.

19-11-511. Renumbered 19-18-511. Code Commissioner, 1993.

19-11-512. Renumbered 19-18-512. Code Commissioner, 1993.

19-11-513. Renumbered 19-18-513. Code Commissioner, 1993.

19-11-514. Renumbered 19-18-514. Code Commissioner, 1993.

Part 6
Benefits (Renumbered)

19-11-601. Renumbered 19-18-601. Code Commissioner, 1993.

19-11-602. Renumbered 19-18-602. Code Commissioner, 1993.

19-11-603. Renumbered 19-18-603. Code Commissioner, 1993.

19-11-604. Renumbered 19-18-604. Code Commissioner, 1993.

19-11-605. Renumbered 19-18-605. Code Commissioner, 1993.

19-11-606. Renumbered 19-18-606. Code Commissioner, 1993.

19-11-607. Renumbered 19-18-607. Code Commissioner, 1993.

19-11-608 through 19-11-610 reserved.

19-11-611. Renumbered 19-18-611. Code Commissioner, 1993.

19-11-612. Renumbered 19-18-612. Code Commissioner, 1993.

CHAPTER 12
VOLUNTEER FIREFIGHTERS' COMPENSATION ACT
(Renumbered)

Part 1 — General Provisions (Renumbered)
Part 2 — Administration of Fund (Renumbered)
Part 3 — Contributions to Fund (Renumbered)
Part 4 — Pension Benefits (Renumbered)
Part 5 — Disability and Death Benefits (Renumbered)

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General Provisions
(Renumbered)

19-12-101. Renumbered 19-17-101. Code Commissioner 1993.

19-12-102. Renumbered 19-17-102. Code Commissioner 1993.

19-12-103. Renumbered 19-17-103. Code Commissioner 1993.

19-12-104. Renumbered 19-17-104. Code Commissioner 1993.

19-12-105. Renumbered 19-17-105. Code Commissioner 1993.

Part 2
Administration of Fund
(Renumbered)

19-12-201. Renumbered 19-17-201. Code Commissioner 1993.

19-12-202. Renumbered 19-17-202. Code Commissioner 1993.

19-12-203. Renumbered 19-17-203. Code Commissioner 1993.

19-12-204. Renumbered 19-17-204. Code Commissioner 1993.

Part 3
Contributions to Fund
(Renumbered)

19-12-301. Renumbered 19-17-301. Code Commissioner 1993.

19-12-302. Renumbered 19-17-302. Code Commissioner 1993.

Part 4
Pension Benefits
(Renumbered)

19-12-401. Renumbered 19-17-401. Code Commissioner 1993.

19-12-402. Renumbered 19-17-402. Code Commissioner 1993.

19-12-403. Renumbered 19-17-403. Code Commissioner 1993.

19-12-404. Renumbered 19-17-404. Code Commissioner 1993.

19-12-405. Renumbered 19-17-405. Code Commissioner 1993.

19-12-406. Renumbered 19-17-406. Code Commissioner 1993.

19-12-407. Renumbered 19-17-407. Code Commissioner 1993.

19-12-408. Renumbered 19-17-408. Code Commissioner 1993.

19-12-409. Renumbered 19-17-409. Code Commissioner 1993.

Part 5
Disability and Death Benefits
(Renumbered)

19-12-501. Renumbered 19-17-501. Code Commissioner 1993.

19-12-502. Renumbered 19-17-502. Code Commissioner 1993.

19-12-503. Renumbered 19-17-503. Code Commissioner 1993.

19-12-504. Renumbered 19-17-504. Code Commissioner 1993.

19-12-505. Renumbered 19-17-505. Code Commissioner 1993.

19-12-506. Renumbered 19-17-506. Code Commissioner 1993.

CHAPTER 13

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

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19-13-101. Short title.
19-13-102. Purpose — application of prior law.
19-13-103. Firefighters' unified retirement system established.
19-13-104. Definitions.
19-13-105. Renumbered 19-13-210.
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19-13-112 through 19-13-114 reserved.
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19-13-213. Excess unfunded liabilities of prior plans.
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19-13-305. Repealed.
19-13-306 through 19-13-309 reserved.
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Part 4 — Service Credit

19-13-401. Repealed.
19-13-402. Repealed.
19-13-403. Application to purchase military service.
19-13-404. Repealed.
19-13-405. Application to purchase additional service.
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19-13-602. Repealed.
19-13-603. Repealed.
19-13-604. State contribution.
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19-13-608. Repealed.
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19-13-610 through 19-13-614 reserved.
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Part 7 — Service Retirement Benefits

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19-13-703. Repealed.
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19-13-1003. Repealed.
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19-13-1007. Minimum benefit adjustment.
19-13-1008. Repealed.
19-13-1009. Repealed.
19-13-1010. Guaranteed annual benefit adjustment.
19-13-1011. Election — guaranteed annual benefit adjustment.
Part 11 — Reemployment of Retired Members
19-13-1101. Reemployment of retired members — contributions required.
19-13-1102. Refunds and benefits for reemployed retired members.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-13-101. Short title. This chapter may be cited as the "Montana Firefighters' Unified Retirement Act".

History: En. Sec. 1, Ch. 566, L. 1981.

Cross-References

Public Employees' Retirement Board — administration, Title 19, ch. 2, part 4.

19-13-102. Purpose — application of prior law. (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by this chapter, applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

(2) Title 19, chapter 18, may not be applied in any way to a city operating under the plan created by this chapter except as otherwise provided.

History: En. Sec. 2, Ch. 566, L. 1981.

Cross-References

Firefighters' retirement, Title 19, ch. 18.

19-13-103. Firefighters' unified retirement system established. A retirement plan is established and known as the firefighters' unified retirement system. The plan is governed by the provisions of chapter 2 and this chapter.

History: En. Sec. 3, Ch. 566, L. 1981; amd. Sec. 205, Ch. 265, L. 1993; amd. Sec. 80, Ch. 562, L. 1999.

19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) (a) "Compensation" means:

(i) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(ii) for a part-paid firefighter employed by a city of the second class:

(A) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(B) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(b) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave;

(ii) per diems, maintenance, allowances, and expenses; or

(iii) bonuses provided after July 1, 2013, that are one-time or temporary payments in addition to and not considered part of base pay.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited secondary or postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed pursuant to 7-33-4106 by an employer as a firefighter meeting the standards provided in 7-33-4107.

(7) (a) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member both reaches 50 years of age or older and completes 5 or more years of membership service.

(9) "Newly confirmed firefighter" means a new member of a fire department appointed pursuant to 7-33-4106 and meeting the standards of 7-33-4107.

(10) "Part-paid firefighter" means a person other than a full-paid firefighter employed by a second-class city who receives compensation in excess of $300 in a fiscal year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(11) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(12) "Retirement date" means the date on which the first payment of benefits is payable.

(13) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(14) "Surviving spouse" means the spouse married to a member at the time of the member's death.

History: **En. Sec. 4, Ch. 566, L. 1981; amd. Sec. 5, Ch. 186, L. 1983; amd. Sec. 21, Ch. 282, L. 1983; amd. Sec. 1, Ch. 585, L. 1983; amd. Sec. 206, Ch. 265, L. 1993; amd. Sec. 1, Ch. 457, L. 1997; amd. Sec. 40, Ch. 58, L. 1999; amd. Sec. 81, Ch. 562, L. 1999; amd. Sec. 1, Ch. 290, L. 2001; amd. Sec. 105, Ch. 429, L. 2003; amd. Sec. 1, Ch. 305, L. 2005; amd. Sec. 29, Ch. 283, L. 2009; amd. Sec. 32, Ch. 178, L. 2013; amd. Sec. 9, Ch. 386, L. 2013; amd. Sec. 34, Ch. 195, L. 2017; amd. Sec. 3, Ch. 152, L. 2025; amd. Sec. 25, Ch. 477, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 152, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 25, Ch. 477, L. 2025. Amendment effective July 1, 2025.

19-13-105. Renumbered 19-13-210. Code Commissioner, 1993.

19-13-106. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 6, Ch. 566, L. 1981.**

19-13-107. Renumbered 19-13-310. Code Commissioner, 1993.

19-13-108. Renumbered 19-13-211. Code Commissioner, 1993.

19-13-109. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 9, Ch. 566, L. 1981.**

19-13-110. Renumbered 19-13-212. Code Commissioner, 1993.

19-13-111. Firefighters' unified retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the firefighters' unified retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: **En. Sec. 7, Ch. 2, L. 2023.**

19-13-112 through 19-13-114 reserved.

19-13-115. Firefighter's association to advise board. The Montana state firefighter's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits of an individual member upon a written release of the member or the member's survivor.

History: **En. Sec. 10, Ch. 566, L. 1981; amd. Sec. 207, Ch. 265, L. 1993; Sec. 19-13-201, MCA 1991; redes. 19-13-115 by Code Commissioner, 1993; amd. Sec. 5, Ch. 166, L. 2023.**

Part 2
Extension of Coverage by Local Government Employers

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-13-201. Renumbered 19-13-115. Code Commissioner, 1993.

19-13-202. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 11, Ch. 566, L. 1981.

19-13-203. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 12, Ch. 566, L. 1981.

19-13-204. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 13, Ch. 566, L. 1981; amd. Sec. 22, Ch. 282, L. 1983.

19-13-205. Terminated. Sec. 7, Ch. 328, L. 1987.

History: En. Sec. 3, Ch. 328, L. 1987.

19-13-206 through 19-13-209 reserved.

19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

(3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.

(b) An election by a city fire department to be covered by the retirement system must be made through adoption of an ordinance stating that the governing body of the city agrees to be bound by the provisions of the retirement system.

(c) A similar election may be made by a rural fire district through adoption of a resolution stating that the governing body of the fire district agrees to be bound by the provisions of the retirement system.

(d) The ordinance or resolution must specify the effective date of the election. The provisions of the retirement system become applicable on the effective date specified in the adopted ordinance or resolution. A certified copy of the ordinance or resolution must be provided to the board.

(4) The following are the terms and conditions of an election to join the retirement system pursuant to subsection (3):

(a) Each firefighter employed by the fire department before the effective date of the election must be given 90 days from the effective date of the election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

(b) Each firefighter employed by the fire department who is hired on or after the effective date of the election must be covered by the retirement system.

(c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or purchase the prior service and transfer that prior service to the retirement system as provided for in 19-2-715.

History: En. Sec. 5, Ch. 566, L. 1981; amd. Sec. 208, Ch. 265, L. 1993; Sec. 19-13-105, MCA 1991; redes. 19-13-210 by Code Commissioner, 1993; amd. Sec. 2, Ch. 290, L. 2001; amd. Sec. 1, Ch. 299, L. 2007; amd. Sec. 22, Ch. 284, L. 2009.

Cross-References

Classification of municipalities, 7-1-4111.
Municipal fire departments, Title 7, ch. 33, part 41.

19-13-211. Election to join retirement system — transfer of assets. (1) Except for cities with only volunteer firefighters, a city other than one described in 19-13-210 may, after July 1, 1981, elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of this retirement system become applicable to the city. Any city that enacts an election ordinance and in which the fire department relief association passes a resolution shall send certified copies to the board and shall, as soon as possible, deposit into the pension trust fund all cash and securities held by its fire department relief association. The value of the securities must be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-13-213.

History: En. Sec. 8, Ch. 566, L. 1981; amd. Sec. 209, Ch. 265, L. 1993; Sec. 19-13-108, MCA 1991; redes. 19-13-211 by Code Commissioner, 1993.

19-13-212. Termination of participation in retirement system or reduction of employer contributions. (1) If an employer voluntarily terminates its participation in or contributions to the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request an actuarial valuation of the liabilities of the employer to the retirement system.

(2) Based on the actuarial valuation, the board may request and the employer shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the employer and to cover the cost of the actuarial valuation to determine those liabilities. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, an employer making payments as provided in subsection (2) may request the board to review the employer's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

History: En. Sec. 1, Ch. 468, L. 1983; amd. Sec. 210, Ch. 265, L. 1993; Sec. 19-13-110, MCA 1991; redes. 19-13-212 by Code Commissioner, 1993; amd. Sec. 3, Ch. 290, L. 2001; amd. Sec. 35, Ch. 195, L. 2017.

19-13-213. Excess unfunded liabilities of prior plans. (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The board shall, within 6 months after a city is granted membership in the retirement system, determine the excess and unfunded liability of the city's previous plan. If the board determines that the city has an excess and unfunded liability under a previous plan that is not funded by sums on deposit or funds available for deposit in the pension trust fund, the city shall pay an additional sum over a period of time to amortize the city's excess liability.

History: En. Sec. 24, Ch. 566, L. 1981; amd. Sec. 3, Ch. 286, L. 1983; amd. Sec. 5, Ch. 661, L. 1983; amd. Sec. 1, Ch. 44, L. 1991; amd. Sec. 211, Ch. 265, L. 1993; Sec. 19-13-503, MCA 1991; redes. 19-13-213 by Code Commissioner, 1993.

19-13-214. Taxing authority of employers. For the purpose of making contributions required of a city under this chapter, the appropriate authority of the city may, subject to

15-10-420, levy a tax that along with other revenue available for that purpose is sufficient to meet the demand.

History: **En. Sec. 32, Ch. 566, L. 1981; Sec. 19-13-606, MCA 1991; redes. 19-13-214 by Code Commissioner, 1993; amd. Sec. 111, Ch. 574, L. 2001.**

Cross-References

Police retirement — statewide plan — taxing authority of employers, 19-9-209.

Firefighters' retirement — special tax levy for fund required, 19-18-503.

Part 3
Eligibility, Membership, and Vesting

Part Cross-References

The Public Employees' Retirement Act — general provisions — termination of membership and refunds, Title 19, ch. 2. part 6.

PERS — membership, Title 19, ch. 3, part 4.

Judges' retirement — membership, Title 19, ch. 5, part 3.

Highway patrol retirement — membership, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership, Title 19, ch. 7, part 3.

Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Teachers' retirement — membership, Title 19, ch. 20, part 3.

19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) A full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing an irrevocable written election with the board within 90 days of becoming a part-paid firefighter.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

History: **En. Sec. 14, Ch. 566, L. 1981; amd. Sec. 212, Ch. 265, L. 1993; amd. Secs. 1, 2, Ch. 254, L. 1997; amd. Sec. 2, Ch. 457, L. 1997; amd. Sec. 109, Ch. 99, L. 2001; amd. Sec. 106, Ch. 429, L. 2003; amd. Sec. 64, Ch. 329, L. 2005; amd. Sec. 2, Ch. 299, L. 2007; amd. Sec. 23, Ch. 284, L. 2009; amd. Sec. 36, Ch. 99, L. 2011.**

19-13-302. Ineligibility for other retirement plans. Except as provided by 19-2-403(4), an active member is not eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on the member's behalf while the member is eligible to be covered by this retirement system.

History: **En. Sec. 15, Ch. 566, L. 1981; amd. Sec. 4, Ch. 661, L. 1983; amd. Sec. 213, Ch. 265, L. 1993; amd. Sec. 36, Ch. 195, L. 2017.**

Cross-References

Legislators — continued participation, 5-2-304.

Sheriffs' retirement — ineligibility for membership in public employees' retirement system, 19-7-302.

Game wardens' and peace officers' retirement — ineligibility for membership in public employees' retirement system — transfer of membership, 19-8-302.

Police retirement — statewide plan — ineligibility for other retirement plans, 19-9-302.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

Firefighters' retirement, Title 19, ch. 18.

19-13-303. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 16, Ch. 566, L. 1981.

19-13-304. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 17, Ch. 566, L. 1981; amd. Sec. 2, Ch. 191, L. 1987.

19-13-305. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 18, Ch. 566, L. 1981.

19-13-306 through 19-13-309 reserved.

19-13-310. Effect on members of prior plans. A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this retirement system retains all rights and benefits accrued under a prior plan.

History: En. Sec. 7, Ch. 566, L. 1981; amd. Sec. 214, Ch. 265, L. 1993; Sec. 19-13-107, MCA 1991; redes. 19-13-310 by Code Commissioner, 1993.

Cross-References

Firefighters' rights in event of city-county consolidation, 7-33-4131.

Retention of firefighters' rights when local government consolidated, 19-18-107.

Part 4
Service Credit

Part Cross-References

PERS — service credit and additional contributions, Title 19, ch. 2, part 7.

19-13-401. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 19, Ch. 566, L. 1981.

19-13-402. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 20, Ch. 566, L. 1981.

19-13-403. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-13-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active duty service in the armed forces of the United States.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible to receive credit in the system for that service under 19-2-707.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the service credit based on the system's most recent actuarial valuation.

History: En. Sec. 21, Ch. 566, L. 1981; amd. Sec. 220, Ch. 265, L. 1993; amd. Sec. 41, Ch. 58, L. 1999; amd. Sec. 110, Ch. 99, L. 2001; amd. Sec. 7, Ch. 26, L. 2003; amd. Sec. 7, Ch. 289, L. 2003; amd. Secs. 107, 122(7), Ch. 429, L. 2003; amd. Sec. 14, Ch. 172, L. 2021.

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Police retirement — local funds — election to qualify previous military service, 19-19-406.
Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

19-13-404. Repealed. Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 6, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 221, Ch. 265, L. 1993; amd. Sec. 24, Ch. 412, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 82, Ch. 562, L. 1999; amd. Sec. 111, Ch. 99, L. 2001.

19-13-405. Application to purchase additional service. (1) Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for service retirement.

History: En. Sec. 5, Ch. 180, L. 1995; amd. Sec. 42, Ch. 58, L. 1999; amd. Sec. 112, Ch. 99, L. 2001; amd. Sec. 108, Ch. 429, L. 2003.

19-13-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-13-403 and 19-13-405.

History: En. Sec. 113, Ch. 99, L. 2001; amd. Sec. 109, Ch. 429, L. 2003.

Part 5
Retirement Account — Creation and Management (Renumbered and Repealed)

19-13-501. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 22, Ch. 566, L. 1981; amd. Sec. 23, Ch. 282, L. 1983.

19-13-502. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 23, Ch. 566, L. 1981.

19-13-503. Renumbered 19-13-213. Code Commissioner, 1993.

19-13-504. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 25, Ch. 566, L. 1981.

19-13-505. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 26, Ch. 566, L. 1981.

19-13-506. Renumbered 19-13-615. Code Commissioner, 1993.

Part 6
Contributions and Refunds

Part Cross-References
Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-13-601. Deduction remitted to firemen's association — member's contribution. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) Each member's contribution to the retirement system as a percentage of the member's compensation must be:

(a) 9.5% for a member not covered under 19-13-1010; or

(b) 10.7% for a member covered under 19-13-1010.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. Sec. 27, Ch. 566, L. 1981; (2)En. Sec. 1, Ch. 289, L. 1983; amd. Sec. 1, Ch. 191, L. 1987; amd. Sec. 58, Ch. 613, L. 1989; amd. Sec. 216, Ch. 265, L. 1993; amd. Sec. 1, Ch. 541, L. 1995; amd. Secs. 3, 12, Ch. 457, L. 1997.

Cross-References

Police protective association — contributions for group life insurance and representation, 7-32-4122, 7-32-4123.
Refund of contributions on termination of service, 19-2-602.
Reinstatement after withdrawal of contributions, 19-2-603.
Purchase of service credits allowed, 19-2-704.
Exemption from taxes and legal process — exceptions, 19-2-1004.
Employer to furnish itemized statement of deductions, 39-3-101.

19-13-602. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 28, Ch. 566, L. 1981.

19-13-603. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 29, Ch. 566, L. 1981; amd. Sec. 5, Ch. 103, L. 1987.

19-13-604. State contribution. The state shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The board shall notify the state auditor by September 1 of each fiscal year of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding fiscal year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 30, Ch. 566, L. 1981; amd. Sec. 6, Ch. 661, L. 1983; amd. Sec. 29, Ch. 703, L. 1985; amd. Sec. 1, Ch. 617, L. 1991; amd. Sec. 217, Ch. 265, L. 1993; amd. Sec. 2, Ch. 541, L. 1995; amd. Secs. 4, 8(4)(b), Ch. 445, L. 1997; amd. Sec. 25, Ch. 532, L. 1997; amd. Sec. 83, Ch. 562, L. 1999; amd. Sec. 114, Ch. 99, L. 2001.

Cross-References

State Auditor, 2-15-601.
Insurance premium tax, 33-2-705.

19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available for this purpose. The employer shall pay as employer contributions 14.36% of the compensation paid to all of the employer's employees, except those properly excluded from membership. All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund.

History: **En. Sec. 31, Ch. 566, L. 1981; amd. Sec. 7, Ch. 661, L. 1983; amd. Sec. 218, Ch. 265, L. 1993; amd. Sec. 3, Ch. 541, L. 1995; amd. Sec. 84, Ch. 562, L. 1999; amd. Sec. 4, Ch. 290, L. 2001; amd. Sec. 65, Ch. 329, L. 2005.**

Cross-References

Payment of contributions by employers — accompanying reports — penalty, 19-2-506.

19-13-606. Renumbered 19-13-214. Code Commissioner, 1993.

19-13-607. Other money credited as employer contributions. All gifts, bequests, and emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by the member's employer, must be paid to the board. The board shall deposit them in the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-13-605.

History: **En. Sec. 33, Ch. 566, L. 1981; amd. Sec. 219, Ch. 265, L. 1993; amd. Sec. 85, Ch. 562, L. 1999.**

Cross-References

Judges' retirement — payments into pension trust fund 19-5-401.
Highway patrol retirement — payments into pension trust fund, 19-6-401.
Sheriffs' retirement — sources of money in fund, 19-7-402.
Game wardens' and peace officers' retirement — contributions to pension trust fund 19-8-501.
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Police retirement — local funds — gifts and money applied to fund, 19-19-304.

19-13-608. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 1, Ch. 13, L. 1987.**

19-13-609. Repealed. Sec. 236, Ch. 265, L. 1993.

History: **En. Sec. 3, Ch. 138, L. 1991.**

19-13-610 through 19-13-614 reserved.

19-13-615. Repealed. Sec. 11, Ch. 457, L. 1997; Sec. 40, Ch. 532, L. 1997.

History: **En. Sec. 3, Ch. 454, L. 1989; amd. Sec. 215, Ch. 265, L. 1993; Sec. 19-13-506, MCA 1991; redes. 19-13-615 by Code Commissioner, 1993.**

Part 7
Service Retirement Benefits

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-13-701. Eligibility for service retirement. (1) Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, the following members are eligible to receive a nonforfeitable service retirement benefit under 19-13-704:

(a) a member who has completed 20 years or more of membership service; or

(b) a vested member who terminates service before completing 20 years of service and applies for a service retirement upon reaching age 50.

(2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member described in subsection (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the member's service retirement.

History: **En. Sec. 34, Ch. 566, L. 1981; amd. Sec. 7, Ch. 53, L. 1983; amd. Sec. 11, Ch. 86, L. 1985; amd. Sec. 17, Ch. 196, L. 1989; amd. Sec. 222, Ch. 265, L. 1993; amd. Sec. 4, Ch. 541, L. 1995; amd. Sec. 35, Ch. 370, L. 1997; amd. Sec. 5, Ch. 457, L. 1997; amd. Sec. 115, Ch. 99, L. 2001; amd. Sec. 110, Ch. 429, L. 2003; amd. Sec. 12, Ch. 240, L. 2013.**

19-13-702. Repealed. Sec. 13, Ch. 86, L. 1985.
History: **En. Sec. 35, Ch. 566, L. 1981.**

19-13-703. Repealed. Sec. 13, Ch. 86, L. 1985.
History: **En. Sec. 36, Ch. 566, L. 1981.**

19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member's highest monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member's highest monthly compensation plus 2% of the member's highest monthly compensation for each year of service credit over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104.

History: **En. Sec. 37, Ch. 566, L. 1981; amd. Sec. 12, Ch. 86, L. 1985; amd. Sec. 3, Ch. 63, L. 1989; amd. Sec. 223, Ch. 265, L. 1993; amd. Sec. 5, Ch. 541, L. 1995; amd. Secs. 6, 12, Ch. 457, L. 1997; amd. Sec. 86, Ch. 562, L. 1999; amd. Sec. 111, Ch. 429, L. 2003; amd. Sec. 2, Ch. 305, L. 2005; amd. Sec. 30, Ch. 283, L. 2009.**

Part 8
Disability Retirement Benefits

Part Cross-References
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Teachers' retirement — disability retirement, Title 19, ch. 20, part 9.

19-13-801. Repealed. Sec. 236, Ch. 265, L. 1993.
History: **En. Sec. 38, Ch. 566, L. 1981.**

19-13-802. Eligibility for disability retirement. If a member is determined by the board to be disabled, the member is entitled to receive a disability retirement benefit, regardless of the length of the member's service, beginning the first day after the date on which the member became disabled and terminated employment because of the disability.

History: **En. Sec. 39, Ch. 566, L. 1981; amd. Sec. 224, Ch. 265, L. 1993; amd. Sec. 66, Ch. 329, L. 2005.**

Cross-References
Disability defined, 19-2-303.
Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit, but no less than one-half of the member's highest average compensation.

(2) A member who becomes disabled as a direct result of the member's service in the line of duty:

(a) before completing 20 years of membership service must receive a line of duty disability retirement benefit equal to one-half of the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a line of duty disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit but no less than one-half of the member's highest average compensation.

(3) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for the benefits provided pursuant to 19-13-704(3).

History: En. Sec. 40, Ch. 566, L. 1981; amd. Sec. 2, Ch. 617, L. 1991; amd. Sec. 225, Ch. 265, L. 1993; amd. Sec. 6, Ch. 541, L. 1995; amd. Sec. 7, Ch. 457, L. 1997; amd. Sec. 112, Ch. 429, L. 2003; amd. Sec. 3, Ch. 305, L. 2005; amd. Sec. 31, Ch. 283, L. 2009; amd. Sec. 33, Ch. 178, L. 2013; amd. Sec. 3, Ch. 596, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 596, L. 2025. Amendment effective May 13, 2025.

Retroactive Applicability: Section 5, Ch. 596, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to members of the municipal police officers' retirement system and the firefighters' unified retirement system who become disabled as a direct result of the member's service in the line of duty on or before January 1, 2025."

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-13-804. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired.

(2) If the board determines that the recipient is not incapacitated, if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(3) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit.

History: En. Sec. 41, Ch. 566, L. 1981; amd. Sec. 226, Ch. 265, L. 1993; amd. Sec. 25, Ch. 412, L. 1995; amd. Sec. 36, Ch. 370, L. 1997; amd. Sec. 32, Ch. 283, L. 2009.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.

Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.

Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.

Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.

Police retirement — statewide plan — reinstatement upon termination of benefit, 19-9-905.

Teachers' retirement — medical examination of disability retiree, 19-20-903.

Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

19-13-805. Reinstatement upon termination of benefit. (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled.

History: En. Sec. 42, Ch. 566, L. 1981; amd. Sec. 227, Ch. 265, L. 1993; amd. Sec. 37, Ch. 370, L. 1997; amd. Sec. 5, Ch. 290, L. 2001; amd. Sec. 67, Ch. 329, L. 2005; amd. Sec. 17, Ch. 400, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.
Police retirement — statewide plan — disability — reinstatement upon termination of benefit, 19-9-905.
Volunteer Firefighters' Compensation Act — cancellation and reinstatement of disability benefits, 19-17-605.
Teachers' retirement — cancellation of allowance and restoration of membership, 19-20-905.

Part 9
Survivorship Benefits and Death Payments

Part Cross-References

Beneficiaries, Title 19, ch. 2, part 8.
Designation of beneficiary, 19-2-801.
Limitations on payment to person causing member's death or disability, 19-2-804.
Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.

19-13-901. Repealed. Sec. 236, Ch. 265, L. 1993.
History: En. Sec. 43, Ch. 566, L. 1981; amd. Sec. 4, Ch. 63, L. 1989.

19-13-902. Survivorship benefit. (1) A member's surviving spouse, if there is one, must receive a survivorship benefit amount as provided in this section. If a member leaves no surviving spouse or on the death of the surviving spouse, the member's surviving dependent children must collectively receive the same benefit that a surviving spouse would have received under this section. A child may receive a share of the benefit as long as the child is a dependent child, as defined in 19-13-104.

(2) (a) The survivorship benefit paid on the death of an active member who has completed less than 20 years of membership service is one-half the highest average compensation received by the member.

(b) The survivorship benefit paid on the death of an inactive member who has completed less than 20 years of membership service is a lump-sum refund of the accumulated contributions standing to the member's credit at the time of the member's death.

(c) The survivorship benefit paid on the death of an active or inactive member who has completed over 20 years of membership service is the benefit amount to which the member was entitled on the date of death.

(3) Benefits provided under this section are subject to the benefit adjustments provided pursuant to part 10 of this chapter.

History: En. Sec. 44, Ch. 566, L. 1981; amd. Sec. 5, Ch. 63, L. 1989; amd. Sec. 228, Ch. 265, L. 1993; amd. Sec. 7, Ch. 541, L. 1995; amd. Sec. 8, Ch. 457, L. 1997; amd. Sec. 116, Ch. 99, L. 2001; amd. Sec. 4, Ch. 305, L. 2005; amd. Sec. 26, Ch. 477, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 26, Ch. 477, L. 2025. Amendment effective July 1, 2025.

Cross-References

PERS — amount of survivorship benefit, 19-3-1205.
Firefighters' retirement — pensions to surviving spouses and children, 19-18-605.

19-13-903. Payments to designated beneficiary. If, after a member dies, a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then the board shall pay to the member's designated beneficiary the amount, if any, of the retired member's accumulated contributions minus the total of any benefits already paid from the member's account.

History: En. Sec. 45, Ch. 566, L. 1981; amd. Sec. 6, Ch. 186, L. 1983; amd. Sec. 229, Ch. 265, L. 1993; amd. Sec. 87, Ch. 562, L. 1999; amd. Sec. 117, Ch. 99, L. 2001.

Cross-References

PERS — survivorship benefit elected by beneficiary, 19-3-1204.
Firefighters' retirement — payment of death benefits in absence of spouse or child, 19-18-607.

Part 10

Postretirement Benefits and Benefit Increases

Part Cross-References

Management of benefit payments, Title 19, ch. 2, part 9.
Exemption from taxes and legal process — exceptions, 19-2-1004.
PERS — minimum benefits and benefit increases, Title 19, ch. 3, part 16.
Highway patrol retirement — minimum benefits and benefit increases, Title 19, ch. 6, part 7.
Sheriffs' retirement — minimum benefits and benefit increases, Title 19, ch. 7, part 7.
Police retirement — statewide plan — minimum benefits and benefit increases, Title 19, ch. 9, part 10.

19-13-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 47, Ch. 566, L. 1981.

19-13-1002. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 48, Ch. 566, L. 1981.

19-13-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 49, Ch. 566, L. 1981; amd. Sec. 3, Ch. 191, L. 1987; amd. Sec. 16, Ch. 823, L. 1991.

19-13-1004. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 50, Ch. 566, L. 1981.

19-13-1005. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 51, Ch. 566, L. 1981.

19-13-1006. Repealed. Sec. 11, Ch. 457, L. 1997.

History: En. Sec. 52, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 468, L. 1983; amd. Sec. 1, Ch. 698, L. 1985; amd. Sec. 230, Ch. 265, L. 1993.

19-13-1007. Minimum benefit adjustment. (1) The following applies to a member with 10 or more years of membership service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of the employer that last employed the member as a firefighter, as provided each year in the budget of that employer.

(b) If after a member retires, the employer that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters of the employer that employed the member, the member's

service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service.

History: En. Sec. 46, Ch. 566, L. 1981; amd. Sec. 3, Ch. 468, L. 1983; amd. Sec. 231, Ch. 265, L. 1993; amd. Sec. 8, Ch. 541, L. 1995; amd. secs. 5, 8(6), Ch. 445, L. 1997; amd. Sec. 88, Ch. 562, L. 1999; amd. Sec. 6, Ch. 290, L. 2001; amd. Sec. 113, Ch. 429, L. 2003.

19-13-1008. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. Sec. 1, Ch. 14, L. 1987.

19-13-1009. Repealed. Sec. 11, Ch. 457, L. 1997.

History: En. Sec. 2, Ch. 454, L. 1989; amd. Sec. 232, Ch. 265, L. 1993; amd. Sec. 9, Ch. 541, L. 1995.

19-13-1010. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 287, L. 1997; amd. Sec. 89, Ch. 562, L. 1999; amd. Sec. 7, Ch. 62, L. 2001; amd. Sec. 17, Ch. 149, L. 2001; amd. Sec. 8, Ch. 309, L. 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-13-1011. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-13-1010 remains valid. The decision of a member who elected not to participate under 19-13-1010 may be reversed under this section.

History: En. Sec. 18, Ch. 149, L. 2001; amd. Sec. 56, Ch. 114, L. 2003.

Part 11
Reemployment of Retired Members

19-13-1101. Reemployment of retired members — contributions required. (1) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service. The retirement benefit of a retired member in covered employment must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

(2) If a retired member returns to employment covered by the retirement system for more than 480 hours in a calendar year, the member returns to active service and the member's retirement benefit payments must cease until the member again terminates employment and retires.

(3) For each retired member who returns to work pursuant to subsection (1), the employer shall contribute the amount specified in 19-13-605 and the state shall contribute the amount specified in 19-13-604.

(4) The earned compensation of retired members who return to active service pursuant to subsection (2) is subject to the employee, state, and employer contributions set forth in 19-13-601, 19-13-604, and 19-13-605.

History: En. Sec. 37, Ch. 99, L. 2011; amd. Sec. 3, Ch. 239, L. 2013; amd. Sec. 37, Ch. 195, L. 2017.

19-13-1102. Refunds and benefits for reemployed retired members. (1) A retired member who returns to active service pursuant to 19-13-1101(2) and accrues less than 5 years of service credit before again terminating service:

(a) may not be awarded service credit for the period of reemployment;

(b) must, upon termination of service and pursuant to 19-2-602, receive a refund of the member's accumulated contributions associated with the service credit accrued upon returning to active service; and

(c) starting the first month following termination of service, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.

(2) A retired member who returns to active service pursuant to 19-13-1101(2) and accrues at least 5 years of service credit before again terminating service must receive, starting the first month following termination of service:

(a) the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and

(b) a second retirement benefit calculated for the period of reemployment under 19-13-704 and the laws in effect as of the member's rehire date.

(3) Postretirement benefit adjustments will start to accrue as follows:

(a) for benefits under subsections (1)(c) and (2)(a), an eligible member is entitled to:

(i) a minimum benefit adjustment pursuant to 19-13-1007 when, immediately following the member's termination of service or retirement, whichever is applicable, a minimum benefit adjustment is granted to all eligible covered retirees; or

(ii) a guaranteed annual benefit adjustment pursuant to 19-13-1010 or 19-13-1011 in January immediately following the member's termination of service or retirement, whichever is applicable;

(b) for benefits under subsection (2)(b), an eligible member is entitled to a guaranteed annual benefit adjustment pursuant to 19-13-1010 or 19-13-1011 in January after the member has received the second retirement benefit for at least 12 months.

(4) A retired member who returns to active service pursuant to 19-13-1101(2) following retirement:

(a) is not eligible for a disability retirement; and

(b) may not accrue the postretirement benefit adjustments provided for in part 10 of this chapter during the member's term of reemployment.

History: En. Sec. 38, Ch. 195, L. 2017.

CHAPTER 14
RESERVED

CHAPTER 15
RETIREMENT ADJUSTMENT
(Repealed)

Part 1 — General Provisions (Repealed)

Part 1
General Provisions
(Repealed)

19-15-101. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 4, Ch. 823, L. 1991; amd. Sec. 2, Ch. 10, Sp. L. January 1992.

19-15-102. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 5, Ch. 823, L. 1991; amd. Sec. 3, Ch. 10, Sp. L. January 1992.

CHAPTER 16
RESERVED

CHAPTER 17
VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Part 1 — General Provisions

19-17-101. Short title.
19-17-102. Definitions.
19-17-103. Renumbered 19-17-205.
19-17-104. Repealed.
19-17-105. Duties of volunteer firefighters.
19-17-106. Pension trust fund established — restrictions on use.
19-17-107. Employment of actuary — annual investigation.
19-17-108. Credit for service as volunteer firefighter — records.
19-17-109. Eligible fire company.
19-17-110. Allowable payments to volunteer firefighters.
19-17-111. Records information management.
19-17-112. Filing required reports — limitations.
19-17-113. Corrections, audits, and penalties.
19-17-114 through 19-17-116 reserved.
19-17-117. Volunteer Firefighters' Compensation Act benefit policy statement.

Part 2 — Administration of Fund

19-17-201. Administration of chapter.
19-17-202. Reports of board.
19-17-203. Rules to be made by board.
19-17-204. Administrative expenses.
19-17-205. Payments to fire companies maintaining supplemental insurance.

Part 3 — Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into pension trust fund.
19-17-302. Investment of pension trust fund.

Part 4 — Pension and Survivorship Benefits

19-17-401. Eligibility for pension benefits.
19-17-402. Repealed.
19-17-403. Application for benefits.
19-17-404. Amount of pension benefits.
19-17-405. Survivorship benefits to surviving spouse or dependent children.
19-17-406. Termination of pension when no surviving spouse or child.
19-17-407. Exemption from legal process.
19-17-408. Renumbered 19-17-604.
19-17-409. Renumbered 19-17-605.
19-17-410. Renumbered 19-17-603.
19-17-411. Time benefits commence.
19-17-412. Return to service.

Part 5 — Medical and Funeral Expenses

19-17-501. Eligibility for medical and funeral expenses.
19-17-502. Medical expenses.
19-17-503. Funeral expenses.
19-17-504. Repealed.
19-17-505. Repealed.
19-17-506. Repealed.

Part 6 — Disability Benefits

19-17-601. Eligibility for disability benefits.
19-17-602. Amount of disability benefit.
19-17-603. Determination of disability.
19-17-604. Medical review of certain disability retirees.
19-17-605. Cancellation of disability benefits.
19-17-606. Time disability benefits commence.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-17-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

History: En. Sec. 1, Ch. 65, L. 1935; re-en. Sec. 5158.1, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020; Sec. 19-12-101, MCA 1991; redes. 19-17-101 by Code Commissioner, 1993.

19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter as provided in 19-17-108 during the most recently reportable fiscal year.

(2) "Allowance" means a total monetary and gift amount that is available to a volunteer firefighter from a fire company pursuant to 19-17-110.

(3) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(4) "Board" means the public employees' retirement board provided for in 2-15-1009.

(5) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(6) "Compensation" means remuneration for services rendered as a firefighter from the fire company requesting credit for that firefighter.

(7) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(8) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

(9) "Disability" or "permanent total disability" means a duty-related injury resulting in permanent total disability as defined in 39-71-116.

(10) "Fire company" means an organization of volunteer firefighters created under the authority of a governing board or commission to serve an unincorporated area, town, or village.

(11) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(12) "Inactive member" means a member not credited with service under this chapter as provided in 19-17-108 during the most recently reportable fiscal year.

(13) "Member" means a volunteer firefighter who has service credited under this chapter.

(14) "Pension benefit" means a full or partial payment for service earned as a volunteer firefighter and does not include payment for disability.

(15) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(16) "Reimbursed" means the return by a fire company of an equivalent amount of money expended by a member for the benefit of the fire company.

(17) "Retiree" or "retired member" means a member who is receiving full or partial pension benefits or disability benefits from the pension trust fund.

(18) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits. Supplemental insurance does not include any insurance required by law, such as workers' compensation insurance.

(19) "Surviving spouse" means the spouse married to a member when the member dies.

(20) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(21) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

(22) "Volunteer firefighter" means a person who is a member of an eligible fire company and is not compensated for services as a firefighter.

History: (1) thru (3), (5)En. 11-2020.1 by Sec. 19, Ch. 157, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2020.1, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; Sec. 11-2022, R.C.M. 1947; R.C.M. 1947, 11-2020.1, 11-2022(5)(d); amd. Sec. 1, Ch. 57, L. 1983; amd. Sec. 19, Ch. 282, L. 1983; Sec. 19-12-102, MCA 1991; redes. 19-17-102 by Code Commissioner, 1993; amd. Sec. 4, Ch. 175, L. 1995; amd. Sec. 38, Ch. 370, L. 1997; amd. Sec. 90, Ch. 562, L. 1999; amd. Sec. 118, Ch. 99, L. 2001; amd. Sec. 26, Ch. 128, L. 2007; amd. Sec. 5, Ch. 64, L. 2011.

19-17-103. Renumbered 19-17-205. Sec. 29, Ch. 64, L. 2011.

19-17-104. Repealed. Sec. 28, Ch. 64, L. 2011.

History: En. Sec. 12, Ch. 65, L. 1935; re-en. Sec. 5158.12, R.C.M. 1935; amd. Sec. 30, Ch. 157, L. 1977; R.C.M. 1947, 11-2031; amd. Sec. 31, Ch. 114, L. 1979; Sec. 19-12-104, MCA 1991; redes. 19-17-104 by Code Commissioner, 1993; amd. Sec. 119, Ch. 99, L. 2001.

19-17-105. Duties of volunteer firefighters. The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

History: En. Sec. 2, Ch. 49, L. 1983; Sec. 19-12-105, MCA 1991; redes. 19-17-105 by Code Commissioner, 1993.

Cross-References

Limitation of liability of voluntary firefighters for emergency care, 27-1-714.

19-17-106. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, and their dependent children, for supplemental payments for qualified fire companies, and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded.

History: En. Sec. 1, Ch. 175, L. 1995; amd. Sec. 91, Ch. 562, L. 1999; amd. Sec. 120, Ch. 99, L. 2001; amd. Sec. 6, Ch. 64, L. 2011.

19-17-107. Employment of actuary — annual investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make an annual actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies.

History: En. Sec. 2, Ch. 175, L. 1995; amd. Sec. 33, Ch. 283, L. 2009.

19-17-108. Credit for service as volunteer firefighter — records. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve throughout the entire fiscal year with a single fire company that is organized under Title 7, chapter 33, and continues to meet the requirements of 19-17-109.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies must be credited toward a member's eligibility for benefits.

(3) A volunteer firefighter may not receive credit for service during any fiscal year unless:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of training in firefighting duties as outlined in 19-17-105 under a formal program that has been formulated, supervised, and certified to the board by the chief or designated official of the fire company; and

(b) the volunteer firefighter's participation in the training program is documented in the fire company's records maintained pursuant to 19-17-111 by the chief or designated official.

History: En. Sec. 3, Ch. 175, L. 1995; amd. Sec. 92, Ch. 562, L. 1999; amd. Sec. 114, Ch. 429, L. 2003; amd. Sec. 1, Ch. 212, L. 2005; amd. Sec. 68, Ch. 329, L. 2005; amd. Sec. 27, Ch. 128, L. 2007; amd. Sec. 8, Ch. 64, L. 2011.

19-17-109. Eligible fire company. To be eligible to participate under this chapter, a fire company shall provide to the board documentation of the following:

(1) the fire company's name and mailing address;

(2) the name of the fire chief and designated official, if any;

(3) the portion of the fire district serviced by the fire company;

(4) that the area serviced is located in an unincorporated area;

(5) that the fire company maintains firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings for the storage of the equipment. The equipment and buildings must be valued at $12,000 or more.

(6) that the fire company was properly established by a governing board. Documentation under this subsection (6) must consist of:

(a) a copy of the minutes of the meeting during which the governing board established the fire company; or

(b) if the meeting minutes are unavailable, a copy of its first filing with the county clerk pursuant to 7-33-2311.

History: En. Sec. 7, Ch. 64, L. 2011.

19-17-110. Allowable payments to volunteer firefighters. (1) Allowable payments to volunteer firefighters include:

(a) payments of money reimbursed for documented expenses; and

(b) an allowance, including a stipend or per diem, that may not exceed $3,000 in a calendar year.

(2) Compensation, as defined in 19-17-102, is not an allowable payment.

(3) Records of all payments and allowances must be maintained pursuant to 19-17-111.

History: En. Sec. 9, Ch. 64, L. 2011; amd. Sec. 1, Ch. 230, L. 2015.

19-17-111. Records information management. (1) The chief or designated official of a fire company shall maintain the records provided for in 19-17-108 and 19-17-110 for each active or inactive member of the fire company.

(2) Records must be maintained according to the state of Montana general records retention schedules, as published by the secretary of state pursuant to Title 2, chapter 6, part 11.

History: En. Sec. 10, Ch. 64, L. 2011; amd. Sec. 46, Ch. 348, L. 2015.

19-17-112. Filing required reports — limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership form must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve filings up to 3 years after the original due date. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate.

History: En. Sec. 11, Ch. 64, L. 2011; amd. Sec. 1, Ch. 96, L. 2013; amd. Sec. 28, Ch. 248, L. 2015; amd. Sec. 39, Ch. 195, L. 2017; amd. Sec. 18, Ch. 400, L. 2023.

19-17-113. Corrections, audits, and penalties. (1) If fraud or error results in a member, surviving spouse, or dependent child receiving more or less of a benefit than that to which the member, surviving spouse, or dependent child is entitled, then on the discovery of the error the board shall correct the credit for service and, if necessary, equitably adjust the payments.

(2) The board may require a fire company to furnish additional information concerning members in connection with an audit or a claim for benefits or service.

(3) Upon discovery of falsified information, the fire company shall submit any and all requested documentation to the board.

(4) A person required to make a statement or affidavit by this chapter who willfully falsifies the statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding $1,000 or be imprisoned for a term not exceeding 1 year, or both.

History: En. Sec. 12, Ch. 64, L. 2011.

19-17-114 through 19-17-116 reserved.

19-17-117. Volunteer Firefighters' Compensation Act benefit policy statement. It is the policy of the state that additional benefits may not be added to the Volunteer Firefighters' Compensation Act unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 8, Ch. 2, L. 2023.

Part 2
Administration of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-17-201. Administration of chapter. (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.

(2) The board shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the benefits provided under this chapter and recommend to the legislature those changes in benefits that may be available for retired members and their beneficiaries.

(5) (a) Disputes regarding credited years of service must be resolved, either by staff of the board and the member or by the board prior to the commencement of the retirement or disability benefit.

(b) Payment of the benefit will be retroactive to the month following the month the retirement application was received by the board.

History: En. Sec. 7, Ch. 65, L. 1935; re-en. Sec. 5158.7, R.C.M. 1935; amd. Sec. 193, Ch. 147, L. 1963; amd. Sec. 1, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 26, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2026; amd. Sec. 3, Ch. 57, L. 1983; amd. Sec. 7, Ch. 481, L. 1993; Sec. 19-12-201, MCA 1991; redes. 19-17-201 by Code Commissioner, 1993; amd. Sec. 6, Ch. 175, L. 1995; amd. Sec. 13, Ch. 64, L. 2011.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Housing authority bonds as legal investments, 7-15-4505.
Separate investment funds, 17-6-203.
Permissible investments, 17-6-211.
PERS — contracts with political subdivisions, Title 19, ch. 3, part 2.

19-17-202. Reports of board. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year.

(2) The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan.

History: En. Sec. 10, Ch. 65, L. 1935; re-en. Sec. 5158.10, R.C.M. 1935; amd. Sec. 5, Ch. 118, L. 1965; amd. Sec. 1, Ch. 159, L. 1967; amd. Sec. 28, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2029; amd. Sec. 4, Ch. 57, L. 1983; (3)En. Sec. 1, Ch. 81, L. 1991; amd. Sec. 38, Ch. 10, L. 1993; amd. Sec. 1, Ch. 283, L. 1993; Sec. 19-12-202, MCA 1991; redes. 19-17-202 by Code Commissioner, 1993; amd. Sec. 121, Ch. 99, L. 2001.

Cross-References

PERS — report by Division to Governor, 19-2-407.

19-17-203. Rules to be made by board. The board shall make rules that it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act and that are not inconsistent with the provisions of the Volunteer Firefighters' Compensation Act.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(1); amd. Sec. 5, Ch. 57, L. 1983; Sec. 19-12-203, MCA 1991; redes. 19-17-203 by Code Commissioner, 1993; amd. Sec. 14, Ch. 64, L. 2011.

Cross-References

Public Employees' Retirement Board — powers and duties, 19-2-403.

19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before fiscal yearend closing, the board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the Volunteer Firefighters' Compensation Act fund to the public employees' pension trust fund.

History: En. Sec. 8, Ch. 65, L. 1935; re-en. Sec. 5158.8, R.C.M. 1935; amd. Sec. 2, Ch. 160, L. 1967; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 27, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2027(2); amd. Sec. 6, Ch. 57, L. 1983; Sec. 19-12-204, MCA 1991; redes. 19-17-204 by Code Commissioner, 1993; amd. Sec. 7, Ch. 175, L. 1995; amd. Sec. 93, Ch. 562, L. 1999; amd. Sec. 15, Ch. 64, L. 2011.

19-17-205. Payments to fire companies maintaining supplemental insurance. To encourage and aid fire companies to maintain supplemental insurance to provide benefits when members are injured or killed while performing duties as volunteer firefighters, the board shall authorize payment of $75 per year for each motorized mobile unit of firefighting equipment, not to exceed $150 per fire company per year. Payment must be a charge against the pension trust fund and must be paid to each fire company maintaining supplemental insurance or to the organization or agency maintaining supplemental insurance for a fire company.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec; 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(4); amd. Sec. 2, Ch. 57, L. 1983; Sec. 19-12-103, MCA 1991; redes. 19-17-103 by Code Commissioner, 1993; amd. Sec. 5, Ch. 175, L. 1995; Sec. 19-17-103, MCA 2009; redes. 19-17-205 by Sec. 29, Ch. 64, L. 2011.

Cross-References

City-county consolidation — no effect on benefits, 7-33-2110, 7-33-2316.
Group insurance for firefighters — funding, 7-33-4130.

Part 3
Contributions to Fund

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-17-301. Fire insurance premium tax to be paid into pension trust fund. The state auditor shall annually pay from the general fund to the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 50-3-109. The sum must be computed before the amounts provided for by 19-13-604, and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 11, Ch. 65, L. 1935; re-en. Sec. 5158.11, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963; amd. Sec. 2, Ch. 204, L. 1975; amd. Sec. 4, Ch. 95, L. 1977; amd. Sec. 29, Ch. 157, L. 1977; amd. Sec. 3, Ch. 480, L. 1977; R.C.M. 1947, 11-2030; amd. Sec. 1, Ch. 313, L. 1981; amd. Sec. 61, Ch. 566, L. 1981; amd. Sec. 28, Ch. 703, L. 1985; Sec. 19-12-301, MCA 1991; redes. 19-17-301 by Code Commissioner, 1993; amd. Sec. 8, Ch. 175, L. 1995; amd. Secs. 28, 39(2)(a), Ch. 532, L. 1997.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.
Ex officio Commissioner of Insurance, 2-15-1903.
Legislators — continued participation, 5-2-304.
Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-18-512.
Insurance premium tax, 33-2-705.

19-17-302. Investment of pension trust fund. (1) The pension trust fund must be invested by the board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust fund must be paid into the pension trust fund as received.

(3) For investment purposes, the pension trust fund may be commingled with other pension funds administered by the board, but a separate account must be maintained for each system.

History: En. Sec. 9, Ch. 65, L. 1935; re-en. Sec. 5158.9, R.C.M. 1935; amd. Sec. 194, Ch. 147, L. 1963; amd. Sec. 3, Ch. 95, L. 1977; R.C.M. 1947, 11-2028; Sec. 19-12-302, MCA 1991; redes. 19-17-302 by Code Commissioner, 1993; amd. Sec. 9, Ch. 175, L. 1995.

Cross-References

Investment of public funds and public retirement system assets, Art. VIII, sec 13, Mont. Const.

Public retirement system assets, Art. VIII, sec 15, Mont. Const.

Part 4
Pension and Survivorship Benefits

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.

Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.

Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.

Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.

Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.

Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

Firefighters' retirement — benefits, Title 19, ch. 18, part 6.

Police retirement — local funds — eligibility for retirement benefits, Title 19, ch. 19, part 4.

Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-17-401. Eligibility for pension benefits. (1) To qualify for a full or partial pension benefit under this chapter, a member must meet the requirements of subsections (2) and (3).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who does not complete at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) Except as provided in 19-17-412:

(a) to receive a pension benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension benefit under this chapter may not become an active member of any fire company.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(2); amd. Sec. 1, Ch. 177, L. 1981; amd. Sec. 66, Ch. 464, L. 1987; amd. Sec. 2, Ch. 283, L. 1993; Sec. 19-12-401, MCA 1991; redes. 19-17-401 by Code Commissioner, 1993; amd. Sec. 10, Ch. 175, L. 1995; amd. Sec. 122, Ch. 99, L. 2001; amd. Sec. 1, Ch. 164, L. 2001; amd. Sec. 1, Ch. 262, L. 2003; amd. Sec. 1, Ch. 391, L. 2005; amd. Sec. 28, Ch. 128, L. 2007; amd. Sec. 34, Ch. 283, L. 2009; amd. Sec. 16, Ch. 64, L. 2011.

Cross-References

City-county consolidation — no effect on benefits, 7-33-2110, 7-33-2316.

19-17-402. Repealed. Sec. 28, Ch. 64, L. 2011.

History: En. 11-2020.2 by Sec. 20, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2020.2; amd. Sec. 7, Ch. 57, L. 1983; Sec. 19-12-402, MCA 1991; redes. 19-17-402 by Code Commissioner, 1993; amd. Sec. 2, Ch. 137, L. 1995; amd. Sec. 11, Ch. 175, L. 1995; amd. Sec. 115, Ch. 429, L. 2003; amd. Sec. 29, Ch. 128, L. 2007.

19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-112 as prima facie proof of service.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(2); amd. Sec. 8, Ch. 57, L. 1983; Sec. 19-12-403, MCA 1991; redes. 19-17-403 by Code Commissioner, 1993; amd. Sec. 12, Ch. 175, L. 1995; amd. Sec. 123, Ch. 99, L. 2001; amd. Sec. 116, Ch. 429, L. 2003; amd. Sec. 17, Ch. 64, L. 2011.

Cross-References

Public Employees' Retirement Board — powers and duties, 19-2-403.
Highway patrol retirement — eligibility and application for service retirement benefit, 19-6-501.
Sheriffs' retirement — eligibility and application for service retirement, 19-7-501.
Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-404. Amount of pension benefits. (1) A member is eligible to receive a pension benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to an eligible member is $200 a month.

(b) A partial pension benefit paid to an eligible member is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) Except as provided in subsection (3), the full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by $7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

(3) (a) Subject to subsection (3)(b), the pension benefit of a member who continues to be a member after completing 30 years of credited service must be increased by $7.50 a month for each additional year of credited service after 30 years if the pension trust fund is actuarially sound and the amortization period for any unfunded liabilities remains 20 years or less.

(b) A member does not have a contract right to any additional pension benefits received pursuant to subsection (3)(a), and the member's monthly benefit must be reduced to the amount provided under subsection (2)(c) if the amortization period for the unfunded liabilities is greater than 20 years.

(c) This subsection (3) applies only to members who retire after July 1, 2011.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(5)(a) thru (5)(c); amd. Sec. 1, Ch. 24, L. 1983; amd. Sec. 9, Ch. 57, L. 1983; amd. Sec. 2, Ch. 81, L. 1991; amd. Sec. 3, Ch. 283, L. 1993; Sec. 19-12-404, MCA 1991; redes. 19-17-404 by Code Commissioner, 1993; amd. Sec. 13, Ch. 175, L. 1995; amd. Sec. 124, Ch. 99, L. 2001; amd. Sec. 1, Ch. 209, L. 2001; amd. Sec. 2, Ch. 262, L. 2003; amd. Sec. 2, Ch. 391, L. 2005; amd. Sec. 18, Ch. 64, L. 2011; amd. Sec. 1, Ch. 195, L. 2011; amd. Sec. 1, Ch. 355, L. 2015; amd. Sec. 1, Ch. 448, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 448, L. 2025. Amendment effective July 1, 2025.

19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to subsection (2) and the limitation in subsection (4), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to:

(a) the surviving spouse, unless the spouse is convicted of knowingly, purposely, or intentionally causing a member's death or disability;

(b) the dependent children upon the spouse's death; or

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) Benefits payable to a dependent child must be paid pursuant to 19-2-803.

(3) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

(4) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits.

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(3), (4); amd. Sec. 1, Ch. 130, L. 1985; Sec. 19-12-405, MCA 1991; redes. 19-17-405 by Code Commissioner, 1993; amd. Sec. 14, Ch. 175, L. 1995; amd. Sec. 125, Ch. 99, L. 2001; amd. Sec. 117, Ch. 429, L. 2003.**

Cross-References

The Public Employees' Retirement Act — designation of beneficiary, 19-2-801.

19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under 18 years of age, the firefighter's pension must terminate at the end of the month prior to the month in which the death occurs.

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(5); Sec. 19-12-406, MCA 1991; redes. 19-17-406 by Code Commissioner, 1993; amd. Sec. 235, Ch. 56, L. 2009.**

Cross-References

Firefighters' unified retirement — payment of death benefits in absence of spouse or child, 19-13-903.

19-17-407. Exemption from legal process. (1) Except as provided in 19-2-907, 19-2-909, and subsection (2) of this section, benefits received under this part are not subject to execution, garnishment, attachment, or any other process.

(2) The right of a person to any benefit or payment and the money in the plan's pension trust fund associated with that benefit or payment is subject, once the person is entitled to distribution of the benefit or payment, to:

(a) a United States tax lien or levy for past-due taxes; and

(b) execution, garnishment, attachment, levy, or other process related to the collection of criminal fines and orders of restitution imposed under federal law as provided for in 18 U.S.C. 3613.

History: **En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(2); amd. Sec. 10, Ch. 57, L. 1983; amd. Sec. 20, Ch. 282, L. 1983; amd. Sec. 15, Ch. 823, L. 1991; Sec. 19-12-407, MCA 1991; redes. 19-17-407 by Code Commissioner, 1993; amd. Sec. 15, Ch. 175, L. 1995; amd. Sec. 126, Ch. 99, L. 2001; amd. Sec. 69, Ch. 329, L. 2005; amd. Sec. 3, Ch. 382, L. 2009; amd. Sec. 40, Ch. 195, L. 2017; amd. Sec. 43, Ch. 503, L. 2021.**

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.
Firefighters' retirement — protection of benefits from legal process and taxation — nonassignability, 19-18-612.
Police retirement — local funds — protection of benefits from legal process and taxation, 19-19-504.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-17-408. Renumbered 19-17-604. Sec. 29, Ch. 64, L. 2011.

19-17-409. Renumbered 19-17-605. Sec. 29, Ch. 64, L. 2011.

19-17-410. Renumbered 19-17-603. Sec. 29, Ch. 64, L. 2011.

19-17-411. Time benefits commence. (1) The pension benefit payable pursuant to this part may commence on:

(a) the first day of the month following the eligible member's last day of service; or

(b) the first day of a later month following filing of the written application.

(2) The benefit may not commence prior to the date of the board's decision regarding any disputed credited years of service pursuant to 19-17-201.

(3) Monthly survivorship benefits payable pursuant to this part must commence the first day of the month following the day of death of the member.

History: **En. Sec. 128, Ch. 99, L. 2001; amd. Sec. 19, Ch. 64, L. 2011.**

19-17-412. Return to service. (1) A retired member may return to service with a fire company without loss of benefits.

(2) A retired member returning to service under this section is not considered an active member of the fire company and may not earn any additional credit for service.

(3) The fire chief shall prescribe the duties of any retired member returning to service.

History: En. Sec. 20, Ch. 64, L. 2011; amd. Sec. 41, Ch. 195, L. 2017.

Part 5
Medical and Funeral Expenses

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.

Judges' retirement — disability retirement and death payments, Title 19, ch. 5, parts 6 and 8.

Highway patrol retirement — disability retirement and death payments, Title 19, ch. 6, parts 6 and 9.

Sheriffs' retirement — disability retirement and death payments, Title 19, ch. 7, parts 6 and 9.

Game wardens' and peace officers' retirement — disability retirement and death payments, Title 19, ch. 8, parts 7 and 10.

Police retirement — statewide plan — disability retirement and death payments, Title 19, ch. 9, parts 9 and 11.

Firefighters' unified retirement — disability retirement and death payments, Title 19, ch. 13, parts 8 and 9.

Firefighters' retirement — benefits, Title 19, ch. 18, part 6.

Police retirement — local funds — benefits, Title 19, ch. 19, part 5.

Teachers' retirement — disability retirement and death benefits, Title 19, ch. 20, parts 9 and 10.

19-17-501. Eligibility for medical and funeral expenses. (1) To qualify for medical expenses under 19-17-502, a volunteer firefighter must be a member of an eligible fire company that is not covered by workers' compensation insurance and must be listed on the fire company roster in the year when the injury or illness occurs. The injury or illness must have occurred in the line of duty, as described in 19-17-105.

(2) To qualify for funeral expenses under 19-17-503, a volunteer firefighter must, at the time of death, be a member of an eligible fire company and must be listed on the fire company roster in the year the death occurs. The death must have occurred in the line of duty, as described in 19-17-105.

History: En. Sec. 4, Ch. 65, L. 1935; re-en. Sec. 5158.4, R.C.M. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973; amd. Sec. 1, Ch. 48, L. 1975; amd. Sec. 1, Ch. 233, L. 1975; amd. Sec. 22, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2023(1); amd. Sec. 3, Ch. 129, L. 1991; Sec. 19-12-501, MCA 1991; redes. 19-17-501 by Code Commissioner, 1993; amd. Sec. 18, Ch. 175, L. 1995; amd. Sec. 21, Ch. 64, L. 2011.

19-17-502. Medical expenses. (1) A member who claims medical expenses under this section shall submit a report of injury and medical claim on a form provided by the board in accordance with the board's rules and a copy of the bill from the medical provider or a receipt for payment of medical expenses. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 12 months from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name, social security number, and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses; and

(g) an affidavit from the chief or designated official of the fire company stating that the member was, at the time of the injury or illness, a member of the fire company and that the injury or illness was incurred in the line of duty as described in 19-17-105.

(3) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty as described in 19-17-105 and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness.

(4) A total claim filed pursuant to subsection (1) may not exceed $25,000.

(5) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of $1,500 to help defray the cost of a prosthesis, whichever is less.

(6) The prosthesis may be replaced when necessary, but not more often than every 60 months. The board shall authorize payment of not more than $1,500 of the replacement costs.

History: En. Sec. 5, Ch. 65, L. 1935; re-en. Sec. 5158.5, R.C.M. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971; amd. Sec. 23, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2024(1); amd. Sec. 3, Ch. 49, L. 1983; amd. Sec. 11, Ch. 57, L. 1983; Sec. 19-12-502, MCA 1991; redes. 19-17-502 by Code Commissioner, 1993; amd. Sec. 19, Ch. 175, L. 1995; amd. Sec. 30, Ch. 128, L. 2007; amd. Sec. 22, Ch. 64, L. 2011; amd. Sec. 42, Ch. 195, L. 2017.

Cross-References

Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-503. Funeral expenses. (1) A person claiming the funeral expenses under this section shall submit a claim form, the death certificate, and either a copy of the bill from the funeral director or a receipt for payment of the funeral expenses. The claim must be submitted on a form provided by the board, in accordance with the board's rules, and must be verified by the claimant. The claim must be filed with the board within 12 months from the member's date of death.

(2) The claim must contain:

(a) the name, social security number, and address of the member; and

(b) an affidavit from the chief or designated official of the fire company stating that the member was, at the time of death, a member of the fire company and that the death occurred in the line of duty as described in 19-17-105.

(3) When a claim under this section is received and approved by the board, payment of reasonable expenses or $1,500, whichever is less, to help defray the funeral expense of the member whose death occurred in the line of duty, as described in 19-17-105, must be made directly to the appropriate provider of the funeral services or, if a receipt is provided for the full payment of funeral expenses, to the claimant.

History: En. 11-2024.1 by Sec. 24, Ch. 157, L. 1977; R.C.M. 1947, 11-2024.1; amd. Sec. 12, Ch. 57, L. 1983; Sec. 19-12-503, MCA 1991; redes. 19-17-503 by Code Commissioner, 1993; amd. Sec. 20, Ch. 175, L. 1995; amd. Sec. 23, Ch. 64, L. 2011; amd. Sec. 43, Ch. 195, L. 2017.

Cross-References

Firefighters' retirement — procedure — applying for and collecting benefits, 19-18-611.

19-17-504. Repealed. Sec. 28, Ch. 64, L. 2011.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; R.C.M. 1947, 11-2022(1), (2); amd. Sec. 4, Ch. 49, L. 1983; amd. Sec. 13, Ch. 57, L. 1983; Sec. 19-12-504, MCA 1991; redes. 19-17-504 by Code Commissioner, 1993; amd. Sec. 21, Ch. 175, L. 1995; amd. Sec. 36, Ch. 283, L. 2009.

19-17-505. Repealed. Sec. 28, Ch. 64, L. 2011.

History: En. Sec. 3, Ch. 65, L. 1935; re-en. Sec. 5158.3, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973; amd. Sec. 1, Ch. 69, L. 1975; amd. Sec. 1, Ch. 90, L. 1977; amd. Sec. 1, Ch. 95, L. 1977; amd. Sec. 21, Ch. 157, L. 1977; amd. Sec. 2, Ch. 480, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2022(3); Sec. 19-12-505, MCA 1991; redes. 19-17-505 by Code Commissioner, 1993; amd. Sec. 22, Ch. 175, L. 1995.

19-17-506. Repealed. Sec. 44, Ch. 195, L. 2017.

History: En. Sec. 6, Ch. 65, L. 1935; re-en. Sec. 5158.6, R.C.M. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974; amd. Sec. 7, Ch. 535, L. 1975; amd. Sec. 2, Ch. 95, L. 1977; amd. Sec. 25, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2025(1); amd. Sec. 14, Ch. 57, L. 1983; Sec. 19-12-506, MCA 1991; redes. 19-17-506 by Code Commissioner, 1993; amd. Sec. 23, Ch. 175, L. 1995; amd. Sec. 24, Ch. 64, L. 2011.

Part 6
Disability Benefits

19-17-601. Eligibility for disability benefits. (1) To qualify for a disability benefit under this chapter, a member must meet the requirements of subsections (2) and (3).

(2) A member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-603, is eligible, regardless of age or service, to receive a disability benefit.

(3) A member who receives a disability benefit may not return to service, either active or inactive, with any fire company.

History: **En. Sec. 25, Ch. 64, L. 2011.**

19-17-602. Amount of disability benefit. (1) A member is eligible to receive a disability benefit as provided in 19-17-601.

(2) The disability benefit paid to an eligible member is calculated by multiplying the full pension benefit as provided in 19-17-404 by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20, except the numerator may not be less than 10.

History: **En. Sec. 26, Ch. 64, L. 2011.**

19-17-603. Determination of disability. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct contested case hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability benefits.

(2) The board shall retain medical personnel to advise it in initially determining the nature and extent of disabling conditions.

History: **En. Sec. 127, Ch. 99, L. 2001; Sec. 19-17-410, MCA 2009; redes. 19-17-603 by Sec. 29, Ch. 64, L. 2011.**

Cross-References

Oaths, Title 1, ch. 6.
Subpoenas in administrative proceedings, 2-4-104, 2-4-611.
Contested cases, Title 2, ch. 4, part 6.
Affidavits, Title 26, ch. 1, part 10.
Subpoenas, Title 26, ch. 2.

19-17-604. Medical review of certain disability retirees. The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a board-approved physician or surgeon at a place mutually agreeable to the board, the physician or surgeon, and the member and at the board's expense. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled.

History: **En. Sec. 2, Ch. 177, L. 1981; Sec. 19-12-408, MCA 1991; redes. 19-17-408 by Code Commissioner, 1993; amd. Sec. 16, Ch. 175, L. 1995; amd. Sec. 35, Ch. 283, L. 2009; Sec. 19-17-408, MCA 2009; redes. 19-17-604 by Sec. 29, Ch. 64, L. 2011.**

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.
Judges' retirement — medical examination of disability retiree — cancellation of benefit, 19-5-612.
Highway patrol retirement — medical examination of disability retiree — cancellation of benefit, 19-6-612.
Sheriffs' retirement — medical examination of disability retiree — cancellation of benefit, 19-7-612.
Game wardens' and peace officers' retirement — medical examination of disability retiree — cancellation of benefit, 19-8-712.
Firefighters' unified retirement — medical examination of disability retiree — cancellation of benefit, 19-13-804.
Teachers' retirement — medical examination of disability retiree, 19-20-903.

19-17-605. Cancellation of disability benefits. (1) The board may cancel a member's disability benefit if:

(a) the board determines, as provided in 19-17-604, that the member is no longer disabled; or

(b) the member refuses to submit to a medical examination under 19-17-604.

(2) The cancellation of a disability benefit under this section does not prejudice any right of a member to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

History: En. Sec. 3, Ch. 177, L. 1981; Sec. 19-12-409, MCA 1991; redes. 19-17-409 by Code Commissioner, 1993; amd. Sec. 17, Ch. 175, L. 1995; Sec. 19-17-409, MCA 2009; redes. 19-17-605 by Sec. 29, Ch. 64, L. 2011; amd. Sec. 34, Ch. 178, L. 2013.

19-17-606. Time disability benefits commence. The disability retirement benefit payable pursuant to this part must commence on the first day of the month following the member's termination from service but may not commence prior to the date of the board's decision regarding any disputed credited years of service pursuant to 19-17-201.

History: En. Sec. 27, Ch. 64, L. 2011.

CHAPTER 18
FIREFIGHTERS' RETIREMENT

Part 1 — General Provisions

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19-18-103. Officers of association.
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19-18-105. Establishment of disability and pension fund.
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19-18-107. Retention of firefighters' rights when local government consolidated.

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19-18-203. Use of disability and pension fund.
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19-18-207. Theft from funds.
19-18-208. Protection of fund as to bank depository securities.

Part 3 reserved

Part 4 — Management of Association — Investment of Fund

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19-18-402. Investment of fund by trustees.
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Part 5 — Contributions to Fund

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19-18-511. Annual report of clerks of cities having fire departments.
19-18-512. State auditor — payment to association.
19-18-513. Repealed.
19-18-514. State treasurer to pay warrants.

Part 6 — Benefits

19-18-601. Benefits the association may provide.
19-18-602. Service pension.
19-18-603. Partial service pension.
19-18-604. Disability pension.
19-18-605. Pensions to surviving spouses and children.
19-18-606. Repealed.
19-18-607. Payment of death benefits in absence of spouse or child.
19-18-608 through 19-18-610 reserved.
19-18-611. Procedure — applying for and collecting benefits.
19-18-612. Protection of benefits from legal process — nonassignability.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal fire departments, Title 7, ch. 33, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.

Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-18-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Association" means the fire department relief association provided for in 19-18-102.

(2) "Disability and pension fund" or "fund" means the fund provided for in 19-18-105.

(3) "Fire department" includes all fire departments, consisting of paid, part-paid, or volunteer firefighters or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

(5) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities or subsequent districts created for urban fire protection services.

History: (1) thru (4)En. 11-1910.1 by Sec. 1, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1910.1, R.C.M. 1947; (5)En. 11-1910.2 by Sec. 2, Ch. 489, L. 1977; Sec. 11-1910.2, R.C.M. 1947; R.C.M. 1947, 11-1910.1, 11-1910.2; Sec. 19-11-101, MCA 1991; redes. 19-18-101 by Code Commissioner, 1993.

19-18-102. Formation of fire department relief association — membership. (1) The confirmed members of a fire department, as defined in 19-18-101, may form a local association to be known as the fire department relief association of the city or town of .... (naming the city or town). When an association is formed, it shall be incorporated under the laws of this state. No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has firefighting equipment in serviceable condition which has a value of $750 or more.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(1), (2); Sec. 19-11-102, MCA 1991; redes. 19-18-102 by Code Commissioner, 1993.

Cross-References

Legislators — continued participation, 5-2-304.
Cooperative associations, Title 35, ch. 15.

19-18-103. Officers of association. When an association is formed, the members shall elect officers by a majority vote. The officers shall be a president, a secretary, a treasurer, and five members to serve on the board of trustees. After the incorporation of an association, the officers shall be elected annually on or before April 15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.

History: En. Sec. 5, Ch. 129, L. 1911; re-en. Sec. 5129, R.C.M. 1921; amd. Sec. 11, Ch. 58, L. 1927; re-en. Sec. 5129, R.C.M. 1935; amd. Sec. 7, Ch. 157, L. 1977; R.C.M. 1947, 11-1922(3); Sec. 19-11-103, MCA 1991; redes. 19-18-103 by Code Commissioner, 1993.

Cross-References

Cooperative associations — directors and officers, 35-15-304.

19-18-104. Board of trustees of association. A board of trustees of such fire department relief association shall be created to consist of seven members:

(1) the president of the fire department relief association and the chief of the fire department, if an active member of the association, shall be ex officio members; and

(2) five members to be elected by the members of such association at the annual election, to be held on or before April 15 of each year.

History: **En. Sec. 4, Ch. 71, L. 1907; Sec. 3337, Rev. C. 1907; re-en. Sec. 5120, R.C.M. 1921; amd. Sec. 4, Ch. 58, L. 1927; R.C.M. 1947, 11-1913; Sec. 19-11-104, MCA 1991; redes. 19-18-104 by Code Commissioner, 1993.**

Cross-References

Police retirement — local funds — local boards of trustees of funds, 19-19-201.
Trust administration, Title 72, ch. 38.
Trustees, Title 72, ch. 38, part 8.

19-18-105. Establishment of disability and pension fund. A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or hereafter forms an association under 19-18-102.

History: **En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en. Sec. 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; R.C.M. 1947, 11-1910(1); Sec. 19-11-105, MCA 1991; redes. 19-18-105 by Code Commissioner, 1993.**

19-18-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-18-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt for the payment. The city treasurer shall, as money is received for the credit of the fund or association, turn the money over to the treasurer of the association, taking proper receipts for the payments.

History: **En. Sec. 7, Ch. 129, L. 1911; re-en. Sec. 5131, R.C.M. 1921; amd. Sec. 13, Ch. 58, L. 1927; re-en. Sec. 5131, R.C.M. 1935; amd. Sec. 9, Ch. 157, L. 1977; R.C.M. 1947, 11-1924; Sec. 19-11-106, MCA 1991; redes. 19-18-106 by Code Commissioner, 1993; amd. Sec. 236, Ch. 56, L. 2009.**

19-18-107. Retention of firefighters' rights when local government consolidated. A firefighter who has vested rights in a disability and pension fund maintains prior vested rights in the fund upon its transfer to a consolidated county municipality. A disability and pension fund established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firefighters employed by any fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under Title 7 or other acts of consolidation or disincorporation. The board of trustees of the disability and pension fund shall continue as provided in 19-18-104. Except as provided in this section, the disability and pension fund shall be continued and administered in the manner prescribed by law for such funds.

History: **En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(2); Sec. 19-11-107, MCA 1991; redes. 19-18-107 by Code Commissioner, 1993.**

Cross-References

Creation, alteration, and abandonment of local governments, Title 7, ch. 2.
Alternative forms of local government, Title 7, ch. 3.
Firefighter's rights in event of city-county consolidation, 7-33-4131.
Sheriffs' retirement — service under municipal police officers' retirement system prior to or following city-county consolidation, 19-7-801.
Police retirement — statewide plan — effect on members of prior plans, 19-9-206.
Firefighters' unified retirement — effect on members of prior plans, 19-13-310.

Part 2
Management and Protection of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.
Teachers' retirement — management of funds, Title 19, ch. 20, part 5.
Discrimination in insurance and retirement plans, 49-2-309.

19-18-201. Management of fund. Except as otherwise provided in this chapter, the association and its board of trustees have full charge, management, and control of the disability and pension fund. The fund shall be kept separate from other funds and shall be held by the treasurer of the association.

History: En. Sec. 13, Ch. 129, L. 1911; re-en. Sec. 5137, R.C.M. 1921; re-en. Sec. 5137, R.C.M. 1935; amd. Sec. 17, Ch. 157, L. 1977; Sec. 11-1930, R.C.M. 1947; En. Sec. 1, Ch. 71, L. 1907; Sec. 3334, Rev. C. 1907; re-en Sec 5117, R.C.M. 1921; amd. Sec. 1, Ch. 58, L. 1927; re-en. Sec. 5117, R.C.M. 1935; amd. Sec. 2, Ch. 157, L. 1977; Sec. 11-1910, R.C.M 1947; R.C.M. 1947, 11-1910(2), 11-1930; Sec. 19-11-201, MCA 1991; redes. 19-18-201 by Code Commissioner, 1993.

19-18-202. Treasurer's bond. The treasurer of an association may not enter upon the duties of office until the treasurer has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of the treasurer's duties according to law. The amount of the bond must be approved by the association and may not exceed $25,000. The bond must be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, the official bond will cover the faithful discharge of duties as the treasurer of the association.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(2); Sec. 19-11-202, MCA 1991; redes. 19-18-202 by Code Commissioner, 1993; amd. Sec. 237, Ch. 56, L. 2009.

Cross-References

Official bonds, Title 2, ch. 9, part 5.

State finance — limits on expenditures — penalty for violation, 17-8-103, 17-8-104.

19-18-203. Use of disability and pension fund. The fund may not be used for any purpose other than investment, as provided in part 4 of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter.

History: En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; R.C.M. 1947, 11-1928(1); amd. Sec. 65, Ch. 370, L. 1987; Sec. 19-11-203, MCA 1991; redes. 19-18-203 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — restrictions on use of funds, 19-2-505.

Teachers' retirement — restrictions on use of money, 19-20-502.

19-18-204. Review and report by board of trustees. The board of trustees of the association shall review the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(1); amd. Sec. 22, Ch. 489, L. 1991; Sec. 19-11-204, MCA 1991; redes. 19-18-204 by Code Commissioner, 1993.

19-18-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. The secretary and treasurer shall file the report with the association, the department of administration, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(1); amd. Sec. 23, Ch. 489, L. 1991; Sec. 19-11-205, MCA 1991; redes. 19-18-205 by Code Commissioner, 1993; amd. Sec. 47, Ch. 483, L. 2001.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

Police retirement — local funds — trustees' report to State Auditor, 19-19-204.

19-18-206. Authority of department of administration — mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of administration.

(2) When a complaint is made to the department of administration that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall report to the governor, upon whose directions to the state auditor warrants may not be issued to the association treasurer until the misspent money has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(3)(a), (3)(b); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-206, MCA 1991; redes. 19-18-206 by Code Commissioner, 1993; amd. Sec. 48, Ch. 483, L. 2001.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

19-18-207. Theft from funds. Any person who fraudulently appropriates any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who takes part in or in any manner aids in any scheme or plan whereby the fund or association is defrauded out of any of the money in the fund is guilty of theft and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 71, L. 1907; Sec. 3341, Rev. C. 1907; re-en. Sec. 5124, R.C.M. 1921; amd. Sec. 7, Ch. 58, L. 1927; re-en. Sec. 5124, R.C.M. 1935; amd. Sec. 44, Ch. 359, L. 1977; R.C.M. 1947, 11-1916; amd. Sec. 7, Ch. 198, L. 1981; Sec. 19-11-207, MCA 1991; redes. 19-18-207 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — penalty for fraud, 19-2-1009.

Teachers' retirement — penalty for fraud, 19-20-105.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Theft, 45-6-301.

19-18-208. Protection of fund as to bank depository securities. The cash in the disability and pension fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R.C.M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; re-en. Sec. 5130, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974; amd. Sec. 18, Ch. 213, L. 1975; amd. Sec. 8, Ch. 157, L. 1977; R.C.M. 1947, 11-1923(part); Sec. 19-11-208, MCA 1991; redes. 19-18-208 by Code Commissioner, 1993.

Cross-References

Deposit of public funds in financial institutions, 7-6-201.

Giving security for deposit prohibited — exceptions, 32-1-447.

Part 3 reserved

Part 4
Management of Association — Investment of Fund

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Teachers' retirement — management of funds, Title 19, ch. 20, part 5.

19-18-401. Management of association. The management of the fire department relief associations and of fire department relief associations of pure volunteer fire departments in first- and second-class cities is vested in the boards of trustees, except as provided in 19-18-402 and 19-18-403.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(a); amd. Sec. 2, Ch. 270, L. 1981; amd. Sec. 54, Ch. 566, L. 1981; Sec. 19-11-401, MCA 1991; redes. 19-18-401 by Code Commissioner, 1993.

19-18-402. Investment of fund by trustees. (1) Subject to the provisions of 19-18-403, when directed by a majority vote of the members of the association, the board of trustees may invest the surplus money in the fund or any part of the surplus money in:

(a) time or saving deposits in a solvent bank, building and loan association, savings and loan association, or credit union operating in the county in which the city or town is located;

(b) bonds or other securities of the United States government; or

(c) general obligation bonds or warrants of any state, county, or city.

(2) Unless otherwise required under 19-18-403, a change in investment type is subject to a majority vote of the board of trustees of the association.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(b); amd. Sec. 1, Ch. 393, L. 1979; amd. Sec. 15, Ch. 421, L. 1985; Sec. 19-11-402, MCA 1991; redes. 19-18-402 by Code Commissioner, 1993; amd. Sec. 1, Ch. 226, L. 2013.

Cross-References

Housing authority bonds as legal investments, 7-15-4505.
Bond issues, Title 17, ch. 5.
Banks — demand or time deposits, 32-1-445.
Mutual associations — powers and duties, 32-2-904.
Credit unions — general powers, 32-3-401.
Montana Facility Finance Authority bonds — legal investment, 90-7-113.

19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-18-402, the surplus money in the fund must be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The board of investments shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 55, Ch. 566, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-403, MCA 1991; redes. 19-18-403 by Code Commissioner, 1993; amd. Sec. 49, Ch. 483, L. 2001.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Department of Commerce, Title 2, ch. 15, part 18.
Housing authority bonds as legal investments, 7-15-4505.
Separate investment funds, 17-6-203.
Permissible investments, 17-6-211.

Part 5
Contributions to Fund

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-18-501. Contributions to fund. The disability and pension fund consists of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly contribution to the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-18-504;

(4) all money received from the state, including those payments provided for in 19-18-512; and

(5) all interest and other income earned from the investment of the fund.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; R.C.M. 1947, 11-1911(1); Sec. 19-11-501, MCA 1991; redes. 19-18-501 by Code Commissioner, 1993; amd. Sec. 1, Ch. 193, L. 2005.

19-18-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all monthly contributions to the fund, within 60 days after permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability that would otherwise qualify the firefighter or the firefighter's surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension.

History: En. Sec. 2, Ch. 71, L. 1907; Sec. 3335, Rev. C. 1907; re-en. Sec. 5118, R.C.M. 1921; amd. Sec. 2, Ch. 58, L. 1927; re-en. Sec. 5118, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1939; amd. Sec. 1, Ch. 208, L. 1967; amd. Sec. 3, Ch. 535, L. 1975; amd. Sec. 3, Ch. 157, L. 1977; amd. Sec. 1, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1911(2); Sec. 19-11-502, MCA 1991; redes. 19-18-502 by Code Commissioner, 1993; amd. Sec. 238, Ch. 56, L. 2009.

Cross-References

The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.
Judges' retirement — refunds in case of resignation or discharge, 19-5-403.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-18-503. Fund to be soundly funded. (1) Each disability and pension fund must be soundly funded at fiscal yearend. The fund is soundly funded if, subject to subsection (2):

(a) assets in the fund are maintained at a level equal to at least three times but no more than five times the benefits paid by the fund in the previous or current fiscal year, whichever is greater; or

(b) funding is maintained at a level determined by an actuarial valuation to be sufficient to keep the fund actuarially sound.

(2) An actuarial valuation may be requested only by a city, town, or association.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(1); amd. Sec. 59, Ch. 614, L. 1981; amd. Sec. 2, Ch. 372, L. 1983; amd. Sec. 1, Ch. 606, L. 1989; Sec. 19-11-503, MCA 1991; redes. 19-18-503 by Code Commissioner, 1993; amd. Sec. 1, Ch. 553, L. 1999; amd. Sec. 29, Ch. 29, L. 2001; amd. Sec. 112, Ch. 574, L. 2001; amd. Sec. 2, Ch. 193, L. 2005; amd. Sec. 1, Ch. 64, L. 2017.

Cross-References

Power to levy taxes for pension funds unaffected by law or Department of Public Safety, 7-3-4464.
Municipal taxation, Title 7, ch. 6, part 44.
Property tax limitation, Title 15, ch. 10, part 4.
Firefighters' unified retirement — taxing authority of employers, 19-13-214.

19-18-504. Special tax levy for fund required. (1) The fund must be reviewed on an annual basis to determine whether the fund is soundly funded pursuant to 19-18-503.

(2) Based on the annual review:

(a) if the fund contains an amount that is less than the minimum amount required to keep the fund soundly funded pursuant to 19-18-503, the city or town council shall, subject to 15-10-420, levy an annual tax on the taxable value of all taxable property within the city or town;

(b) if the fund contains an amount that is less than the maximum but more than the minimum required to keep the fund soundly funded pursuant to 19-18-503(1)(a), the city or town council may, if authorized by the voters as provided in 15-10-425, levy an annual tax.

(3) All revenue from the tax must be deposited in the fund.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R.C.M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; re-en. Sec. 5119, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd.

Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974; amd. Sec. 4, Ch. 157, L. 1977; R.C.M. 1947, 11-1912(2); amd. Sec. 56, Ch. 566, L. 1981; amd. Sec. 60, Ch. 614, L. 1981; amd. Sec. 2, Ch. 606, L. 1989; Sec. 19-11-504, MCA 1991; redes. 19-18-504 by Code Commissioner, 1993; amd. Sec. 2, Ch. 553, L. 1999; amd. Sec. 30, Ch. 29, L. 2001; amd. Sec. 26, Ch. 495, L. 2001; amd. Sec. 113, Ch. 574, L. 2001; amd. Sec. 3, Ch. 193, L. 2005; amd. Sec. 2, Ch. 64, L. 2017.

19-18-505 through 19-18-510 reserved.

19-18-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state a certificate stating that fact. The certificate must include the system of water supply in use in the fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and other facts that the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911; re-en. Sec. 5125, R.C.M. 1921; re-en. Sec. 5125, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1975; R.C.M. 1947, 11-1917; Sec. 19-11-511, MCA 1991; redes. 19-18-511 by Code Commissioner, 1993; amd. Sec. 239, Ch. 56, L. 2009.

Cross-References

Duties of City Clerk related to administration, 7-4-4501.

19-18-512. State auditor — payment to association. (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of each city or town that has a fire department relief association entitled by law to receive payments. The warrant must be for the use and benefit of the association. The warrant must be for an amount equal to 1½ mills of the total taxable value of the city or town and must be paid out of the general fund. The payment is statutorily appropriated as provided in 17-7-502.

(2) The payment provided for in subsection (1) must be for at least $100.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R.C.M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; re-en. Sec. 5127, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974; amd. Sec. 1, Ch. 227, L. 1975; amd. Sec. 2, Ch. 228, L. 1975; amd. Sec. 1, Ch. 264, L. 1975; amd. Sec. 6, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 27, Ch. 566, L. 1977; R.C.M. 1947, 11-1919; amd. Sec. 1, Ch. 296, L. 1979; amd. Sec. 4, Ch. 250, L. 1981; amd. Sec. 57, Ch. 566, L. 1981; amd. Sec. 25, Ch. 703, L. 1985; Sec. 19-11-512, MCA 1991; redes. 19-18-512 by Code Commissioner, 1993; amd. Sec. 29, Ch. 532, L. 1997.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.
State Auditor ex officio Commissioner of Insurance, 2-15-1903.
City Treasurer, 7-4-4701.
Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-17-301.
Insurance premium tax, 33-2-705.

19-18-513. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. Sec. 2, Ch. 15, L. 1935; re-en. Sec. 5127.1, R.C.M. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974; R.C.M. 1947, 11-1920; amd. Sec. 58, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 26, Ch. 703, L. 1985; Sec. 19-11-513, MCA 1991; redes. 19-18-513 by Code Commissioner, 1993.

19-18-514. State treasurer to pay warrants. The state treasurer shall, upon the presentation of a warrant drawn pursuant to this chapter, pay to the treasurer of the city or town, out of money in the state special revenue fund dedicated for that purpose, the amount of the warrant, which amount must be paid by the city treasurer to the fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R.C.M. 1921; amd. Sec. 10, Ch. 58, L. 1927; re-en. Sec. 5128, R.C.M. 1935; amd. Sec. 70, Ch. 147, L. 1963; R.C.M. 1947, 11-1921; amd. Sec. 2, Ch. 296, L. 1979; amd. Sec. 59, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; Sec. 19-11-514, MCA 1991; redes. 19-18-514 by Code Commissioner, 1993; amd. Sec. 240, Ch. 56, L. 2009.

Cross-References

Ex officio State Treasurer, 2-15-1002.

Part 6
Benefits

19-18-601. Benefits the association may provide. Every fire department relief association may allow to its members benefits for the following causes, as provided by law:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) to a member who has become maimed or disabled for life in line of duty;

(3) to a member who has suffered injury in line of duty;

(4) to a member who has contracted sickness in line of duty;

(5) funeral expenses of a member;

(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.

History: En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; R.C.M. 1947, 11-1915(part); Sec. 19-11-601, MCA 1991; redes. 19-18-601 by Code Commissioner, 1993.

19-18-602. Service pension. (1) Each association shall pay, out of its disability and pension fund, a service pension to a member who elects to retire from active service after having completed 20 years or more of active duty and who has reached 50 years of age as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for the member's services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years must receive the pension provided for in subsection (1) increased at the rate of 1% a year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department. A member is not eligible to receive a service pension prior to attaining 50 years of age.

(3) (a) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200.

(b) In the case of volunteer firefighters, the pension may be set by the board of trustees of the association, but may not exceed $225 a month, except that the pension may be set by the board of trustees of an association and a city at an amount not to exceed $300 a month if the association's fund is soundly funded as provided in 19-18-503.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless the member is making a monthly contribution to the disability and pension fund, as required by 19-18-501, and is on active duty as a fully paid member of a fire department when the member reaches 50 years of age.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of age. A member of a pure volunteer fire department who has completed 10 years of service as an active member of the fire department but who is prevented from completing 20 years of service by dissolution or discontinuance of the member's volunteer fire department, personal relocation because of transfer or loss of employment, personal disability, or any other factor beyond the member's reasonable control may qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of age.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R.C.M. 1921; amd. Sec. 14, Ch. 58, L. 1927; re-en. Sec. 5132, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974; amd. Sec. 1, Ch. 58, L. 1977; amd. Sec. 10, Ch. 157, L. 1977; amd. Sec. 3, Ch. 484, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1925; amd. Sec. 1, Ch. 446, L. 1983; Sec. 19-11-602, MCA 1991; redes. 19-18-602 by Code Commissioner, 1993; amd. Sec. 1, Ch. 51, L. 2001; amd. Sec. 1, Ch. 252, L. 2013.

19-18-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if the member:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and reached 50 years of age as an active firefighter;

(b) is permanently separated from service;
(c) does not qualify for a disability pension under 19-18-604; and
(d) does not receive a refund of the member's contributions under 19-18-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date the firefighter would have both reached 50 years of age and completed 20 years of service as a member of a fire department had the member's active duty not been terminated.

(3) The pension must be paid out of the disability and pension fund and must consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if the firefighter had remained in active duty as a member of a fire department until the date the firefighter would have both reached 50 years of age and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department.

(4) If the firefighter dies after the firefighter is permanently separated from service and before the firefighter both reaches 50 years of age and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) must be made to the surviving spouse commencing on the date the firefighter would have both reached 50 years of age and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached 18 years of age, the children must receive the payments until the youngest reaches 18 years of age.

(5) If the firefighter dies after both reaching 50 years of age and the date the firefighter would have completed 20 years of service as an active member of a fire department, the payments must be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-18-602 do not apply to pensions received under this section.

History: En. 11-1925.1 by Sec. 2, Ch. 484, L. 1977; R.C.M. 1947, 11-1925.1; amd. Sec. 29, Ch. 114, L. 1979; Sec. 19-11-603, MCA 1991; redes. 19-18-603 by Code Commissioner, 1993; amd. Sec. 241, Ch. 56, L. 2009.

Cross-References

PERS — early retirement benefit, 19-3-906.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — early retirement benefit, 19-6-503.
Teachers' retirement — early retirement, 19-20-802.

19-18-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for the member's services to the fire department of the city or town in which the association was formed.

(2) A member who completes 20 years of service and elects to serve additional years must receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department.

(3) The monthly pension paid to members must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed $125 a month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R.C.M. 1921; amd. Sec. 15, Ch. 58, L. 1927; re-en. Sec. 5133, R.C.M. 1935; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974; amd. Sec. 1, Ch. 47, L. 1975; amd. Sec. 11, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1926; amd. Sec. 2, Ch. 446, L. 1983; Sec. 19-11-604, MCA 1991; redes. 19-18-604 by Code Commissioner, 1993; amd. Sec. 242, Ch. 56, L. 2009.

19-18-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604. The pension must be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) If the deceased member completed 20 years of service and elected to serve additional years, the pension provided for in subsection (1) must be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member or an active member who elects to retire must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least $200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only as long as the spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter elected to retire from active service and began to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the firefighter qualified for and had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained 18 years of age.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R.C.M. 1921; amd. Sec. 16, Ch. 58, L. 1927; re-en. Sec. 5134, R.C.M. 1935; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974; amd. Sec. 5, Ch. 535, L. 1975; amd. Sec. 12, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927; amd. Sec. 1, Ch. 82, L. 1987; Sec. 19-11-605, MCA 1991; redes. 19-18-605 by Code Commissioner, 1993; amd. Sec. 243, Ch. 56, L. 2009.

Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.
Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.
Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.
Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.
Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.
Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.
Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.
Police retirement — local funds — death benefits, 19-19-503.
Teachers' retirement — allowances for death of member, 19-20-1001.

19-18-606. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 11-1927.2 by Sec. 1, Ch. 32, L. 1975; amd. Sec. 14, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.2; amd. Sec. 3, Ch. 296, L. 1979; amd. Sec. 60, Ch. 566, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 27, Ch. 703, L. 1985; amd. Sec. 1, Ch. 454, L. 1989; Sec. 19-11-606, MCA 1991; redes. 19-18-606 by Code Commissioner, 1993.

19-18-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member did not nominate a beneficiary, the contributions must be paid to the member's estate.

History: En. Sec. 1, Ch. 276, L. 1973; amd. Sec. 13, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1927.1; Sec. 19-11-607, MCA 1991; redes. 19-18-607 by Code Commissioner, 1993; amd. Sec. 244, Ch. 56, L. 2009.

19-18-608 through 19-18-610 reserved.

19-18-611. Procedure — applying for and collecting benefits. (1) All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance, and claimant shall have the right to appeal to the association in the event the claim be disallowed.

(2) All claims shall be paid by warrant, duly authorized, drawn by the secretary and countersigned by the president of the association. On presentation of the warrant, the treasurer shall pay it out of the disability and pension fund.

History: (1)En. Sec. 7, Ch. 71, L. 1907; Sec. 3340, Rev. C. 1907; re-en. Sec. 5123, R.C.M. 1921; amd. Sec. 6, Ch. 58, L. 1927; re-en. Sec. 5123, R.C.M. 1935; amd. Sec. 3, Ch. 208, L. 1967; amd. Sec. 4, Ch. 535, L. 1975; Sec. 11-1915, R.C.M. 1947; (2)En. Sec. 11, Ch. 129, L. 1911; re-en. Sec. 5135, R.C.M. 1921; amd. Sec. 17, Ch. 58, L. 1927; amd. Sec. 1, Ch. 103, L. 1931; re-en. Sec. 5135, R.C.M. 1935; amd. Sec. 8, Ch. 208, L. 1967; amd. Sec. 2, Ch. 47, L. 1975; amd. Sec. 6, Ch. 535, L. 1975; amd. Sec. 15, Ch. 157, L. 1977; Sec. 11-1928, R.C.M. 1947; R.C.M. 1947, 11-1915(part), 11-1928(2); Sec. 19-11-611, MCA 1991; redes. 19-18-611 by Code Commissioner, 1993.

Cross-References

PERS — election of optional death annuity, 19-3-1203.
Volunteer Firefighters' Compensation Act — procedure for claiming funeral expenses, 19-17-503.

19-18-612. Protection of benefits from legal process — nonassignability. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum assigned.

History: En. Sec. 12, Ch. 129, L. 1911; re-en. Sec. 5136, R.C.M. 1921; re-en. Sec. 5136, R.C.M. 1935; amd. Sec. 16, Ch. 157, L. 1977; R.C.M. 1947, 11-1929; amd. Sec. 30, Ch. 114, L. 1979; amd. Sec. 14, Ch. 823, L. 1991; Sec. 19-11-612, MCA 1991; redes. 19-18-612 by Code Commissioner, 1993; amd. Sec. 17, Ch. 552, L. 1997; amd. Sec. 4, Ch. 382, L. 2009; amd. Sec. 44, Ch. 503, L. 2021.

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.
The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.
Teachers' retirement — exemption from taxation and legal process — exceptions, 19-20-706.
University System retirement program — exemption from taxation, legal process, and assessments, 19-21-212.
Execution of judgment, Title 25, ch. 13.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

CHAPTER 19

POLICE RETIREMENT — LOCAL FUNDS

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19-19-503. Death benefits.
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19-19-505. Withholding of group insurance premium from retirement benefit.
19-19-506. Supplement to certain pensions.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Municipal police force, Title 7, ch. 32, part 41.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
The Public Employees' Retirement Act — general provisions, Title 19, ch. 2.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Teachers' retirement, Title 19, ch. 20.

Part 1
General Provisions

19-19-101. Definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in this chapter includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

History: En. 11-1839.1 by Sec. 1, Ch. 489, L. 1977; R.C.M. 1947, 11-1839.1; Sec. 19-10-101, MCA 1991; redes. 19-19-101 by Code Commissioner, 1993.

Part 2
Management of Police Retirement Funds

19-19-201. Local boards of trustees of funds. (1) Each city or town that has a police retirement fund must have a board of trustees of the fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They must be selected by a majority vote of the members of the police department on the active list of the city or town. One must be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the presiding officer of the board and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city that elects to participate in the municipal police officers' retirement system under 19-9-207 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the public employees' retirement board, as provided in the Municipal Police Officers' Retirement Act.

History: (1) thru (3)En. Sec. 12, Ch. 120, L. 1929; re-en. Sec. 5108.12, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1977; Sec. 11-1828, R.C.M. 1947; (4)En. 82A-225, by Sec. 34, Ch. 456, L. 1977; Sec. 82A-225, R.C.M. 1947; R.C.M. 1947, 11-1828, 82A-225; amd. Sec. 15, Ch. 114, L. 1979; Sec. 19-10-201, MCA 1991; redes. 19-19-201 by Code Commissioner, 1993; amd. Sec. 94, Ch. 562, L. 1999.

Cross-References

Board of trustees continued — consolidation of local government, 7-3-1344.
Trust administration — powers of trustees, Title 72, ch. 38.

19-19-202. Limit on use of fund. (1) Except as provided in subsection (2), a police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

(2) When a city or town no longer employs a police officer eligible to receive benefits paid from the city's or town's police retirement fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor, for deposit in the general fund, an amount proportional to the prior contributions made by the state under 19-19-305, as determined by the state auditor. Any remaining money in the fund must be transferred to the city or town general fund to be used by the city or town for any authorized city or town purpose.

History: En. Sec. 14, Ch. 120, L. 1929; re-en. Sec. 5108.14, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1830; amd. Sec. 16, Ch. 114, L. 1979; amd. Sec. 1, Ch. 460, L. 1985; amd. Sec. 64, Ch. 370, L. 1987; Sec. 19-10-202, MCA 1991; redes. 19-19-202 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — restrictions on use of funds, 19-2-505.

Teachers' retirement — restrictions on use of money, 19-20-502.

19-19-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1½ times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204.

History: (1)En. Sec. 11, Ch. 120, L. 1929; re-en. Sec. 5108.11, R.C.M. 1935; Sec. 11-1827, R.C.M. 1947; (2) En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; Sec. 11-1829, R.C.M. 1947; (3)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1827, 11-1829(2), (3), 11-1836(part); amd. Sec. 17, Ch. 114, L. 1979; amd. Sec. 3, Ch. 395, L. 1981; Sec. 19-10-203, MCA 1991; redes. 19-19-203 by Code Commissioner, 1993.

Cross-References

Housing authority bonds as legal investments, 7-15-4505.

The Public Employees' Retirement Act — general provisions — investment of pension trust funds, 19-2-504.

Firefighters' retirement — investment of fund by trustees, 19-18-402.

Firefighters' retirement — investment of fund by Board of Investments, 19-18-403.

Teachers' retirement — financial administration of money, 19-20-501.

Montana Facility Finance Authority bonds — legal investment, 90-7-113.

19-19-204. Trustees' report to state auditor. The board of trustees of each police retirement fund shall on or before April 1 of each year report to the state auditor as to the financial condition of its fund.

History: En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; R.C.M. 1947, 11-1836(part); amd. Sec. 18, Ch. 114, L. 1979; Sec. 19-10-204, MCA 1991; redes. 19-19-204 by Code Commissioner, 1993.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; 2-15-601.

19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the public employees' retirement board before September 1 of each odd-numbered year all information requested by the public employees' retirement board necessary to complete an actuarial valuation of the city's police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected by the public employees' retirement board. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the public employees' retirement board shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund.

History: En. Sec. 13, Ch. 120, L. 1929; re-en. Sec. 5108.13, R.C.M. 1935; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974; amd. Sec. 16, Ch. 213, L. 1975; amd. Sec. 4, Ch. 224, L. 1977; R.C.M. 1947, 11-1829(1); amd. Sec. 1, Ch. 64, L. 1979; amd. Sec. 19, Ch. 114, L. 1979; amd. Sec. 22, Ch. 703, L. 1985; Sec. 19-10-205, MCA 1991; redes. 19-19-205 by Code Commissioner, 1993; amd. Sec. 28, Ch. 422, L. 1997; amd. Sec. 30, Ch. 532, L. 1997; amd. Sec. 95, Ch. 562, L. 1999; amd. Sec. 70, Ch. 329, L. 2005.

Cross-References

The Public Employees' Retirement Act — employment of actuary — biennial investigation and valuation, 19-2-405.

Part 3
Contributions to Funds

Part Cross-References

Management and investment of pension trust funds, Title 19, ch. 2, part 5.
PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Teachers' retirement — funds — contributions, Title 19, ch. 20, part 6.

19-19-301. City's contribution to fund. Each city, other than one of the first or second class, that has a police retirement fund and that did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-207 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of the city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund cannot be met, the city, subject to 15-10-420, may impose an additional levy in an amount that is sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; re-en. Sec. 5108.7, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974; amd. Sec. 1, Ch. 224, L. 1977; amd. Sec. 35, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1823; amd. Sec. 20, Ch. 114, L. 1979; Sec. 19-10-301, MCA 1991; redes. 19-19-301 by Code Commissioner, 1993; amd. Sec. 114, Ch. 574, L. 2001.

Cross-References

Power to levy taxes for pension fund unaffected by law or Department of Public Safety, 7-3-4464.

19-19-302. Officer's contribution deducted from salary. The treasurer of an incorporated city that has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of the officer's monthly compensation for services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974; amd. Sec. 2, Ch. 224, L. 1977; amd. Sec. 36, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1825; amd. Sec. 21, Ch. 114, L. 1979; Sec. 19-10-302, MCA 1991; redes. 19-19-302 by Code Commissioner, 1993; amd. Sec. 245, Ch. 56, L. 2009.

Cross-References

Law enforcement reserve and auxiliary officers — participation prohibited, 7-32-202.
PERS — member's contribution deducted, 19-3-315.
Judges' retirement — member's contribution, 19-5-402.
Highway patrol retirement — member's contribution, 19-6-402.
Sheriffs' retirement — member's contributions deducted, 19-7-403.
Game wardens' and peace officers' retirement — member's contribution, 19-8-502.
Police retirement — statewide plan — member's contribution, 19-9-710.
Firefighters' unified retirement — member's contribution, 19-13-601.

Firefighters' retirement — contributions to fund, 19-18-501.
Teachers' retirement — annuity savings fund — member's contribution, 19-20-602.
Employer to furnish itemized statement of deductions, 39-3-101.

19-19-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list must be entitled to the return of the amounts paid to the fund through deductions from the officer's salary. If the officer has 10 years or more of service, the amount paid must include regular interest on the amounts. If the officer has less than 10 years of service, the officer must receive only the amount paid through salary deductions, without interest.

History: En. 11-1847 by Sec. 17, Ch. 335, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1847; Sec. 19-10-303, MCA 1991; redes. 19-19-303 by Code Commissioner, 1993; amd. Sec. 246, Ch. 56, L. 2009.

Cross-References
The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.
Judges' retirement — refunds in case of resignation or discharge, 19-5-403.
Firefighters' retirement — refund of firefighter's contribution, 19-18-502.
Teachers' retirement — withdrawal of accumulated contributions, 19-20-603.

19-19-304. Gifts and money to be applied to fund. The following shall be placed in the police retirement fund and transmitted promptly to the board of trustees:

(1) all money withheld from salaries of police officers for the violation of rules of the police department;

(2) all bequests, gifts, or emoluments paid or given on account of any extraordinary service of a member of the police department, except when specifically allowed to be retained by the officer by the mayor, commissioners, and chief of police; and

(3) all money derived from the provisions of this chapter.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; re-en. Sec. 5108.10, R.C.M. 1935; amd. Sec. 8, Ch. 335, L. 1974; amd. Sec. 37, Ch. 456, L. 1977; R.C.M. 1947, 11-1826; amd. Sec. 22, Ch. 114, L. 1979; Sec. 19-10-304, MCA 1991; redes. 19-19-304 by Code Commissioner, 1993.

Cross-References
Police retirement — statewide plan — other money credited as employer contributions, 19-9-705.
Firefighters' unified retirement — other money credited as employer contributions, 19-13-607.

19-19-305. Annual state payments to municipality with police department. (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana that has a police department and that is not a participant in the municipal police officers' retirement system a warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-18-512. The payment from the general fund is statutorily appropriated as provided in 17-7-502.

(2) Each city or town that has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

(3) Payments provided for in 19-19-205 and subsection (1) of this section are in addition to those provided for in 19-19-301.

History: (1)En. Sec. 1, Ch. 261, L. 1965; amd. Sec. 1, Ch. 229, L. 1975; amd. Sec. 38, Ch. 456, L. 1977; Sec. 11-1834, R.C.M. 1947; (2)En. Sec. 2, Ch. 261, L. 1965; amd. Sec. 2, Ch. 128, L. 1974; amd. Sec. 1, Ch. 230, L. 1975; Sec. 11-1835, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 261, L. 1965; amd. Sec. 9, Ch. 335, L. 1974; amd. Sec. 6, Ch. 224, L. 1977; amd. Sec. 39, Ch. 456, L. 1977; Sec. 11-1836, R.C.M. 1947; R.C.M. 1947, 11-1834, 11-1835, 11-1836(part); amd. Sec. 23, Ch. 114, L. 1979; amd. Sec. 3, Ch. 250, L. 1981; amd. Sec. 23, Ch. 703, L. 1985; Sec. 19-10-305, MCA 1991; redes. 19-19-305 by Code Commissioner, 1993; amd. Sec. 31, Ch. 532, L. 1997.

Cross-References
Expenditure of state payments by municipality not having police retirement system — annual report, 7-32-4120.
Police retirement — statewide plan — state contribution, 19-9-702.
Firefighters' unified retirement — state contribution, 19-13-604.
Volunteer Firefighters' Compensation Act — fire insurance premium tax to be paid into fund, 19-17-301.
Firefighters' retirement — State Auditor to pay association out of insurance premium taxes, 19-18-512.

Part 4
Eligibility for Retirement Benefits

Part Cross-References
PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.

Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.
Volunteer Firefighters' Compensation Act — pension benefits, Title 19, ch. 17, part 4.
Firefighters' retirement — benefits, Title 19, ch. 18, part 6.
Teachers' retirement — superannuation retirement, Title 19, ch. 20, part 8.

19-19-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and may retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when the person has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when the person has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); amd. Sec. 8, Ch. 86, L. 1985; Sec. 19-10-401, MCA 1991; redes. 19-19-401 by Code Commissioner, 1993; amd. Sec. 247, Ch. 56, L. 2009.

19-19-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of duties as a police officer and the injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of a character that impairs the officer's ability to discharge the duties of an active police officer, the officer must be placed on the retired list of the city or town.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(1)(d); Sec. 19-10-402, MCA 1991; redes. 19-19-402 by Code Commissioner, 1993; amd. Sec. 248, Ch. 56, L. 2009.

Cross-References

PERS — eligibility for disability retirement, 19-3-1002.
Police retirement — statewide plan — eligibility for disability retirement, 19-9-902.
Firefighters' unified retirement — eligibility for disability retirement, 19-13-802.
Volunteer Firefighters' Compensation Act — eligibility for medical and funeral expenses, 19-17-501.
Teachers' retirement — eligibility for disability retirement, 19-20-901.

19-19-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under 19-19-401(1) or (2) may transfer, as of the time the officer becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-19-401(2) and who completes 20 years of service before reaching 50 years of age is considered to have elected to serve an additional year for each year between the completion of the officer's 20th year of service and 50th birthday, and the officer must be paid the additional 1% for each of those years.

History: (1)En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1843, R.C.M. 1947; (2)En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(2), 11-1844(part); amd. Sec. 9, Ch. 86, L. 1985; Sec. 19-10-403, MCA 1991; redes. 19-19-403 by Code Commissioner, 1993; amd. Sec. 249, Ch. 56, L. 2009.

19-19-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and added to the retired list of police officers and may enjoy all the benefits, pensions, and rights that accrue to police officers placed on the retired list in the city or town. The pension benefits to be allowed to a reinstated officer must be computed upon the basis of the officer's last full year of active service on the police force.

History: En. Sec. 2, Ch. 205, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1809; Sec. 19-10-404, MCA 1991; redes. 19-19-404 by Code Commissioner, 1993; amd. Sec. 250, Ch. 56, L. 2009.

19-19-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency must be given credit in the officer's police record for the military service in the same manner as though the officer were on active police duty.

History: En. 11-1843 by Sec. 13, Ch. 335, L. 1974; amd. Sec. 11, Ch. 224, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1843(part); Sec. 19-10-405, MCA 1991; redes. 19-19-405 by Code Commissioner, 1993; amd. Sec. 251, Ch. 56, L. 2009.

19-19-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit. To qualify this service, the member shall contribute to the account the actuarial cost of granting the service to be determined by the board based on the member's compensation and normal contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date of eligibility for this benefit to the date of contribution. The member may not qualify more military service than the service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, the member may not qualify military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the active duty in the armed forces of the United States is not more than 25% of the total of all years of military service, including reserve and active duty time.

History: En. 11-1842.1 by Sec. 1, Ch. 368, L. 1977; R.C.M. 1947, 11-1842.1; amd. Sec. 24, Ch. 114, L. 1979; Sec. 19-10-406, MCA 1991; redes. 19-19-406 by Code Commissioner, 1993; amd. Sec. 252, Ch. 56, L. 2009.

Cross-References

Veteran defined, 10-2-101.

PERS — election to qualify military service, 19-3-503.

Highway patrol retirement — election to qualify military service, 19-6-801.

Sheriffs' retirement — election to qualify previous military service, 19-7-803.

Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.

Police retirement — statewide plan — election to qualify previous military service, 19-9-403.

Firefighters' unified retirement — election to qualify previous military service, 19-13-403.

Teachers' retirement — creditable service for active service in military, American Red Cross, or merchant marine, 19-20-404.

Part 5
Benefits

19-19-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, the officer must receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-401(1) or (2) and does not elect to serve any additional years as an active police officer must receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on the highest salary received in any 1 month during the last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years must receive the payment provided for in subsection (1) plus an additional 1% of the payment for each year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on the highest salary received in any 1 month during the last year of active service.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 25, Ch. 114, L. 1979; amd. Sec. 10, Ch. 86, L. 1985; Sec. 19-10-501, MCA 1991; redes. 19-19-501 by Code Commissioner, 1993; amd. Sec. 253, Ch. 56, L. 2009.

19-19-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, the officer must receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-402 before completing 20 years of service must receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on the highest salary received in any 1 month during the last year of active service.

(2) A police officer who is placed on the retired list under 19-19-402 and who, at the time of injury or disability, was eligible at the officer's option to be placed on the retired list under 19-19-401(1) or (2) but had elected to serve additional years and was then serving the additional years must be paid for the additional years over the officer's original eligibility at the rate prescribed in 19-19-501(2).

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(part); amd. Sec. 26, Ch. 114, L. 1979; Sec. 19-10-502, MCA 1991; redes. 19-19-502 by Code Commissioner, 1993; amd. Sec. 254, Ch. 56, L. 2009.

Cross-References

Disability defined, 19-2-303.

Workers' compensation — permanent partial disability and permanent total disability defined, 39-71-116.

19-19-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a city, the officer's surviving spouse, if there is one, must, as long as the spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on the highest salary received in any 1 month during the last year of active service.

(2) If the officer leaves one or more dependent minor children, upon the officer's death if there is no surviving spouse or upon the death or remarriage of the surviving spouse, the surviving dependent minor children, collectively if there is more than one, must receive the same monthly payments as a surviving spouse would receive, until they reach 18 years of age or are married. The payments must be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one child, upon each child reaching 18 years of age or marrying, the pro rata payments to that child must cease and must be made to the remaining children until all the children have either reached 18 years of age or are married.

History: En. 11-1844 by Sec. 14, Ch. 335, L. 1974; amd. Sec. 12, Ch. 224, L. 1977; amd. Sec. 40, Ch. 456, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1844(2); amd. Sec. 27, Ch. 114, L. 1979; Sec. 19-10-503, MCA 1991; redes. 19-19-503 by Code Commissioner, 1993; amd. Sec. 255, Ch. 56, L. 2009.

Cross-References

PERS — death benefits, Title 19, ch. 3, part 12.

Judges' retirement — payments upon employment-related death, 19-5-801.

Judges' retirement — payments upon death from other causes, 19-5-802.

Highway patrol retirement — payments upon employment-related death, 19-6-901.

Highway patrol retirement — payments upon death from other causes, 19-6-902.

Sheriffs' retirement — payments upon death before retirement, 19-7-901.

Game wardens' and peace officers' retirement — death benefits, 19-8-1001, 19-8-1002.

Police retirement — statewide plan — preretirement death benefits, 19-9-1101.

Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.

Firefighters' retirement — death benefits, 19-18-605, 19-18-607.

Teachers' retirement — death benefits, Title 19, ch. 20, part 10.

Group life insurance for public employees authorized, 33-20-1104.

19-19-504. Protection of benefits from legal process. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

History: En. 11-1845 by Sec. 15, Ch. 335, L. 1974; amd. Sec. 1, Ch. 214, L. 1977; amd. Sec. 13, Ch. 224, L. 1977; R.C.M. 1947, 11-1845; amd. Sec. 13, Ch. 823, L. 1991; Sec. 19-10-504, MCA 1991; redes. 19-19-504 by Code Commissioner, 1993; amd. Sec. 18, Ch. 552, L. 1997; amd. Sec. 5, Ch. 382, L. 2009; amd. Sec. 45, Ch. 503, L. 2021.

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.

The Public Employees' Retirement Act — general provisions — exemption from taxes and legal process — exceptions, 19-2-1004.

Teachers' retirement — exemption from taxes and legal process — exceptions, 19-20-706.

Execution of judgment, Title 25, ch. 13.

Exempt property — bankruptcy proceeding, 31-2-106.

Exemption of benefits from liens of health care providers, 71-3-1118.

19-19-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of the former employer. Withholding may not be made for any retiree covered by an individual insurance policy.

History: En. 11-1845.1 by Sec. 2, Ch. 214, L. 1977; R.C.M. 1947, 11-1845.1; Sec. 19-10-505, MCA 1991; redes. 19-19-505 by Code Commissioner, 1993; amd. Sec. 256, Ch. 56, L. 2009.

Cross-References

The Public Employees' Retirement Act — withholding of group insurance premium from retirement benefit, 19-2-904.

Payments to volunteer fire companies maintaining supplemental insurance, 19-17-205.

Group life insurance for public employees authorized, 33-20-1104.

19-19-506. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may not be less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and who were receiving the payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor child entitled to receive payments from the police retirement fund, the amount that would have been paid to an eligible spouse of the police officer if that spouse had been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, the city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference must be paid by the state auditor out of the general fund to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-19-305(1). The payment is statutorily appropriated as provided in 17-7-502.

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to the minor children under this section must be determined as if there were one minor child and the supplementary payment must be made to the minor children collectively.

History: **En. 11-1846.1 by Sec. 2, Ch. 406, L. 1977; R.C.M. 1947, 11-1846.1(part); amd. Sec. 28, Ch. 114, L. 1979; amd. Sec. 24, Ch. 703, L. 1985; Sec. 19-10-506, MCA 1991; redes. 19-19-506 by Code Commissioner, 1993; amd. Sec. 32, Ch. 532, L. 1997.**

Cross-References

PERS — adjustment of benefit for certain members, 19-3-905.
Highway patrol retirement — supplemental benefits for certain retirees, 19-6-709.
Police retirement — statewide plan — supplement to certain benefits, 19-9-1007.

CHAPTER 20
TEACHERS' RETIREMENT

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19-20-712. Repealed.
19-20-713. Repealed.
19-20-714. Repealed.
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19-20-1214. Costs and fees for recovering amounts owed.
19-20-1215. Statute of limitations.

Chapter Cross-References

Administration of public retirement system assets, Art. VIII, sec. 15, Mont. Const.
Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
University System retirement program, Title 19, ch. 21.
Education, Title 20.
Teachers, superintendents, and principals, Title 20, ch. 4.

Part 1
General Provisions

19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" or "account balance" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest, minus any amount deducted for correction of errors and the aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on behalf of the member.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Alternate beneficiary" means an estate or an individual not designated as a beneficiary but that becomes a beneficiary pursuant to 19-20-1005.

(4) "Average final compensation" means a member's highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(5) "Beneficiary designation" means the process that the retirement system prescribes pursuant to this chapter by which a person authorized by law designates one or more beneficiaries.

(6) "Beneficiary designation record" means either the hard copy form or electronic record prescribed by the retirement system and used by a person authorized by law to designate one or more beneficiaries.

(7) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(8) "Contingent beneficiary" means a designated beneficiary with the right to receive any benefit or refund of accumulated contributions payable if there is no eligible primary beneficiary.

(9) "Creditable service" is that service defined by 19-20-401.

(10) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

(11) "Designated beneficiary" means one or more primary beneficiaries or contingent beneficiaries designated pursuant to 19-20-1006.

(12) (a) "Earned compensation" means, except as limited by subsections (12)(b) and (12)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits;

(iv) any noncash benefit provided by an employer to or on behalf of a member;

(v) termination pay unless included pursuant to 19-20-716;

(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;

(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;

(ix) a professional stipend paid pursuant to 20-4-134; or

(x) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) (i) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(ii) Cash paid in lieu of any direct employer-paid or noncash benefit that has previously been or would be paid or provided to or on behalf of the employee at the employee's request or direction is considered a fringe benefit and not earned compensation.

(13) "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;
(g) the Montana youth challenge program, as defined in 10-1-101;
(h) a correctional facility, as defined in 41-5-103;
(i) the Montana university system;
(j) a community college; or
(k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(14) "Extra duty service" means:

(a) service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district's curricular, cocurricular,or extracurricular programs; or

(b) service not in an educational services capacity that is regularly assigned to a school district teacher, teacher's aide, paraprofessional, or administrator for the purposes of student supervision during school functions that are not part of the school district's regular curricular, cocurricular, or extracurricular programs.

(c) For the purposes of this subsection (14), "educational services capacity" has the same meaning as provided in 19-20-302(10).

(15) "Full-time service" means service that is:
(a) at least 180 days in a fiscal year;
(b) at least 140 hours a month during at least 9 months in a fiscal year; or
(c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

(16) "Individual" means a human being.

(17) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(18) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702(2), (4), or (5) has designated to receive a retirement allowance upon the death of the retired member.

(19) "Member" means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member.

(20) "Normal form" or "normal form benefit" means a monthly retirement benefit payable only for the lifetime of the retired member.

(21) "Normal retirement age" means an age no earlier than 60 years of age.

(22) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(23) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(24) "Primary beneficiary" means a designated beneficiary with a first right to receive any benefit or refund of accumulated contributions payable upon the death of the individual authorized by law to make the designation.

(25) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(26) "Retired", "retired member", or "retiree" means a person who is considered in retired member status under the provisions of 19-20-810.

(27) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(28) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(29) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(30) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(31) "Termination" or "terminate" means that the employment relationship between the member and the member's employer has been terminated as required in 19-20-810.

(32) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(33) "Tier one member" means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.

(34) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

(35) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(36) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983; amd. Sec. 1, Ch. 224, L. 1985; amd. Sec. 6, Ch. 464, L. 1985; amd. Sec. 2, Ch. 45, L. 1987; amd. Sec. 1, Ch. 56, L. 1989; amd. Sec. 1, Ch. 331, L. 1989; amd. Sec. 2, Ch. 13, L. 1991; Sec. 19-4-101, MCA 1991; redes. 19-20-101 by Code Commissioner, 1993; amd. Sec. 2, Ch. 111, L. 1995; amd. Sec. 5, Ch. 442, L. 1997; amd. Sec. 2, Ch. 111, L. 1999; amd. Sec. 2, Ch. 45, L. 2001; amd. Sec. 57, Ch. 114, L. 2003; amd. Sec. 1, Ch. 174, L. 2003; amd. Sec. 1, Ch. 90, L. 2007; amd. Sec. 3, Ch. 305, L. 2007; amd. Sec. 1, Ch. 282, L. 2009; amd. Sec. 1, Ch. 59, L. 2011; amd. Sec. 1, Ch. 366, L. 2013; amd. Sec. 1, Ch. 389, L. 2013; amd. Sec. 1, Ch. 39, L. 2017; amd. Sec. 1, Ch. 150, L. 2017; amd. Sec. 1, Ch. 276, L. 2019; amd. Sec. 1, Ch. 173, L. 2021; amd. Sec. 1, Ch. 339, L. 2021; amd. Sec. 1, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

Supplemental Social Security coverage for teachers — referendum by school district, 19-1-811.

Community college teachers eligible for retirement system benefits, 20-15-106.

19-20-102. Retirement system — policy. (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers' retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers' retirement system is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731.

(3) It is the policy of the state to ensure that public employees are reported to the correct public retirement system. The retirement system shall enter into memoranda of understanding

with the public employees' retirement board to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202; Sec. 19-4-102, MCA 1991; redes. 19-20-102 by Code Commissioner, 1993; amd. Sec. 4, Ch. 305, L. 2007; amd. Sec. 2, Ch. 59, L. 2011.

Cross-References

Social Security coverage not to prejudice retirement rights, 19-1-802.
Retirement system to be considered separate for each institution, 19-1-821.

19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from the person's compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); Sec. 19-4-103, MCA 1991; redes. 19-20-103 by Code Commissioner, 1993; amd. Sec. 257, Ch. 56, L. 2009.

Cross-References

Consent in general, Title 28, ch. 2, part 3.
Implied acceptance, 28-2-503.

19-20-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation account, and the maintenance of accumulated contributions in the annuity savings account, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216; Sec. 19-4-104, MCA 1991; redes. 19-20-104 by Code Commissioner, 1993; amd. Sec. 6, Ch. 442, L. 1997; amd. Sec. 2, Ch. 90, L. 2007.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

19-20-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1); Sec. 19-4-105, MCA 1991; redes. 19-20-105 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — penalty for fraud, 19-2-1009.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.
Misdemeanor — no penalty specified, 46-18-212.

19-20-106. Retaining qualified plan status — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the plan to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board.

History: En. Sec. 3, Ch. 442, L. 1997; amd. Sec. 3, Ch. 111, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-20-107 through 19-20-110 reserved.

19-20-111. Teachers' retirement system benefit policy statement. It is the policy of the state that additional benefits may not be added to the teachers' retirement system unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity.

History: En. Sec. 9, Ch. 2, L. 2023.

Part 2
Administration of System

Part Cross-References

The Public Employees' Retirement Act — general provisions — administration of retirement systems, Title 19, ch. 2, part 4.

Volunteer Firefighters' Compensation Act — administration of fund, Title 19, ch. 17, part 2.

University System retirement program — administration, Title 19, ch. 21, part 1.

Discrimination in insurance and retirement plans, 49-2-309.

19-20-201. Administration by retirement board — jurisdiction and venue for judicial review. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;

(g) require the board's actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement system;

(h) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(i) annually determine the rate of regular interest as prescribed in 19-20-501;

(j) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(k) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and reports required pursuant to subsections (1)(d), (1)(f), and (1)(g).

(5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the judicial district in which the appealing party resides or, if the person resides outside the state, the first judicial district, Lewis and Clark County.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18); amd. Sec. 25, Ch. 112, L. 1991; amd. Sec. 25, Ch. 349, L. 1993; Sec. 19-4-201, MCA 1991; redes. 19-20-201 by Code Commissioner, 1993; amd. Sec. 3, Ch. 45, L. 2001; amd. Sec. 2, Ch. 174, L. 2003; amd. Sec. 8, Ch. 285, L. 2007; amd. Sec. 6, Ch. 155, L. 2013; amd. Sec. 2, Ch. 366, L. 2013; amd. Sec. 7, Ch. 535, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Teachers' Retirement Board, 2-15-1010.
Representation on Board of Investments, 2-15-1808.
Administration of retirement systems, Title 19, ch. 2, part 4.
University System retirement program — Board of Regents — authority to establish, 19-21-101.
Superintendent of Public Instruction to be on Teachers' Retirement Board, 20-3-106.

19-20-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive compensation as provided in 2-15-122 and travel expenses as provided in 2-18-501 through 2-18-503 for each day in attendance at the meetings of the board or in the execution of duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section must be paid from the expense account of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983; Sec. 19-4-202, MCA 1991; redes. 19-20-202 by Code Commissioner, 1993; amd. Sec. 3, Ch. 90, L. 2007; amd. Sec. 4, Ch. 603, L. 2023.

Cross-References

PERS — compensation and expenses of Board members, 19-2-402.

19-20-203. Officers and employees of retirement board. (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

(b) employ an executive director and other technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

(c) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10); amd. Sec. 1, Ch. 24, L. 1987; amd. Sec. 1, Ch. 490, L. 1987; Sec. 19-4-203, MCA 1991; redes. 19-20-203 by Code Commissioner, 1993; amd. Sec. 3, Ch. 111, L. 1995; amd. Sec. 33, Ch. 532, L. 1997; amd. Sec. 3, Ch. 59, L. 2011.

Cross-References

PERS — powers and duties of Board, 19-2-403.
PERS — employment of actuary, 19-2-405.

19-20-204. Repealed. Sec. 8, Ch. 39, L. 2017.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14); Sec. 19-4-204, MCA 1991; redes. 19-20-204 by Code Commissioner, 1993.

19-20-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-20-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12); Sec. 19-4-205, MCA 1991; redes. 19-20-205 by Code Commissioner, 1993.

Cross-References

PERS — membership, 19-3-401.
Judges' retirement — membership, 19-5-301.
Highway patrol retirement — membership, 19-6-301.
Sheriffs' retirement — membership, 19-7-301.
Game wardens' and peace officers' retirement — membership, 19-8-301.
Police retirement — statewide plan — membership, 19-9-301.
Firefighters' unified retirement — membership, 19-13-301.
University System retirement program — duties of Board of Regents, 19-21-103.

19-20-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter. However, benefits will be granted only if the board decides, in its discretion as limited by law, that an applicant for benefits is entitled to those benefits. All applicants who are in similar circumstances must be treated alike.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15); Sec. 19-4-206, MCA 1991; redes. 19-20-206 by Code Commissioner, 1993; amd. Sec. 4, Ch. 45, L. 2001.

19-20-207. Repealed. Sec. 11, Ch. 111, L. 1995.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219; Sec. 19-4-207, MCA 1991; redes. 19-20-207 by Code Commissioner, 1993.

19-20-208. Duties and liability of employer. (1) Each employer shall:

(a) (i) each month, report the name, social security number, time worked, and gross earnings of each employed member; and

(ii) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602 and 19-20-608 and transmit the contributions to the executive director of the retirement board;

(b) transmit to the retirement system the employer's contributions prescribed by 19-20-605 and 19-20-609 at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement system, furnish information that is required in the discharge of the retirement system's duties, including financial, personal services, or other information or documentation requested by the retirement system to verify proper retirement system reporting and contribution remittance related to any individual hired by, working for, or paid by the employer, whether as a common law employee, an independent contractor, an employee or contractor of a third party, a volunteer, or in any other capacity;

(d) on the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the university system retirement program under Title 19, chapter 21;

(g) at the request of the retirement system, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(h) each month, report the name, social security number, time worked, and gross earnings of each substitute teacher, teacher's aide, and paraprofessional who, pursuant to 19-20-302(4), has elected not to participate in the retirement system prior to completing 210 hours of employment in any fiscal year.

(2) An employer shall submit a wage and contribution report to the retirement system every month, including for any month in which the employer does not pay compensation reportable to the retirement system.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214 (part); amd. Sec. 5, Ch. 464, L. 1985; amd. Sec. 11, Ch. 494, L. 1987; Sec. 19-4-208, MCA 1991; redes. 19-20-208 by Code Commissioner, 1993; amd. Sec. 7, Ch. 442, L. 1997; amd. Sec. 3, Ch. 174, L. 2003; amd. Sec. 1, Ch. 320, L. 2005; amd. Sec. 4, Ch. 59, L. 2011; amd. Sec. 1, Ch. 151, L. 2011; amd. Sec. 7, Ch. 282, L. 2013; amd. Sec. 2, Ch. 389, L. 2013; amd. Sec. 2, Ch. 276, L. 2019; amd. Sec. 2, Ch. 173, L. 2021; amd. Sec. 2, Ch. 245, L. 2023; amd. Sec. 2, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

PERS — duties of employer, 19-3-315.
PERS — employer contributions, 19-3-316.
Judges' retirement — duties of employer, 19-5-402.
Highway patrol retirement — duties of employer, 19-6-402.
Sheriffs' retirement — duties of employer, 19-7-403.
Game wardens' and peace officers' retirement — duties of employer, 19-8-502.
Police retirement — statewide plan — duties of employer, 19-9-710.
Firefighters' unified retirement — duties of employer, 19-13-601.

19-20-209 through 19-20-211 reserved.

19-20-212. General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) (a) If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code, the board may establish a qualified governmental excess benefit arrangement and adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code and this section.

(b) An excess benefit arrangement established pursuant to this section is subject to the following requirements:

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system.

(iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

History: En. Sec. 4, Ch. 111, L. 1999; amd. Sec. 4, Ch. 174, L. 2003; amd. Sec. 2, Ch. 320, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-20-213 and 19-20-214 reserved.

19-20-215. Presentation to board of investments. The retirement board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

History: En. Sec. 3, Ch. 285, L. 2007.

19-20-216. Board to make special report. As soon as possible after the completion of each annual actuarial valuation for the teachers' retirement system, the board shall have its actuary present a detailed actuarial report in accordance with 5-11-210 to the legislative finance committee and to the state administration and veterans' affairs interim committee. The actuarial report must provide a trend analysis of the system's actual and projected progress toward 100% funding. The reporting requirement may be addressed in reports provided in accordance with 19-20-201.

History: En. Sec. 20, Ch. 389, L. 2013; amd. Sec. 45, Ch. 261, L. 2021.

Part 3
Membership

Part Cross-References

PERS — membership, Title 19, ch. 3, part 4.
Judges' retirement — membership, Title 19, ch. 5, part 3.
Highway patrol retirement — membership, Title 19, ch. 6, part 3.
Sheriffs' retirement — membership, Title 19, ch. 7, part 3.
Game wardens' and peace officers' retirement — membership, Title 19, ch. 8, part 3.
Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.
Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.
University System retirement program — participation, 19-21-201.

19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, the person shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1); Sec. 19-4-301, MCA 1991; redes. 19-20-301 by Code Commissioner, 1993; amd. Sec. 258, Ch. 56, L. 2009.

19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the university system retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;

(d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;

(g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 or 19-3-413 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher, part-time teacher's aide, or paraprofessional who is not already an active, inactive, or retired member of the retirement system shall make an irrevocable written election to become an active member of the retirement system on the first day of employment or to defer membership in the retirement system until the individual has completed 210 hours of service in any fiscal year.

(b) Upon completing 210 hours of service in a fiscal year for one employer or in aggregate for two or more employers, the individual shall become an active member of the retirement system. Active membership is effective the first day of the month following the month in which aggregate service reported by all employers equals or exceeds 210 hours. After a substitute teacher, part-time teacher's aide, or paraprofessional becomes a member, the individual shall remain an active or inactive member until the individual meets the requirements to withdraw from the retirement system or become a retired member.

(c) An employer shall provide an election form to an eligible substitute teacher, part-time teacher's aide, or paraprofessional on the first day of employment. The employer shall require submission of the election form back to the employer and shall maintain the election form permanently.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" or "paraprofessional" means an individual who works less than 7 hours a day.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the university system retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the university system retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsection (1)(a) or subsections (1)(c) through (1)(i) is ineligible to be an active member of the teachers' retirement system.

(9) (a) A position is not reportable to the retirement system if the position is a bona fide volunteer position.

(b) A position is a bona fide volunteer position if all of the following criteria are met:

(i) The individual in the position receives no salary, stipend, remuneration of any kind, reimbursement of expenses, or in-kind benefits or services for service in the position. Employer payments of premiums for required insurance coverage directly related to the volunteer service, such as workers' compensation coverage or personal or professional liability coverage, do not constitute remuneration.

(ii) The position was not a paid position with the employer within the 12 months prior to being designated as a volunteer position by the employer.

(iii) The position does not become a paid position for at least 12 months following the employer's designation of the position as a volunteer position.

(iv) The employer does not have any other individual working as a paid employee in the same position while the position is designated as a volunteer position.

(v) The individual in the position does not perform work in the volunteer position in excess of:

(A) 4 hours in a day, 12 hours in a week, and 312 hours in a fiscal year if the service is performed during regular business days of the employer; or

(B) 312 hours in a fiscal year if the service is performed primarily at times other than during regular business days of the employer.

(c) The retirement system may require the employer to provide information and documentation to verify that a position designated as a volunteer position meets all requirements set forth in this subsection (9).

(10) As used in this section, "educational services capacity" refers to an individual who:

(a) directly instructs students;

(b) provides professional or education-related services that help students participate in or receive the full benefit of an educational program;

(c) evaluates the competencies or proper placement of students, determines or implements student-specific educational programs or plans, or provides direct or indirect support for academic or behavior intervention;

(d) determines the proper curriculum or educational standards applicable to the program, determines the appropriate educational and instructional methodologies, selects or creates the instructional materials, or trains teachers or other staff responsible for implementing the curriculum, standards, and methodologies of the program;

(e) directs, supervises, or oversees the work of other individuals employed in an educational or instructional services capacity; or

(f) is the primary administrator of an employer that provides educational services or is the primary administrator of an educational program of an employer that provides educational services.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983; amd. Sec. 1, Ch. 22, L. 1987; amd. Sec. 1, Ch. 296, L. 1987; amd. Sec. 12, Ch. 494, L. 1987; amd. Sec. 6, Ch. 658, L. 1987; amd. Sec. 2, Ch. 56, L. 1989; amd. Sec. 1, Ch. 178, L. 1993; Sec. 19-4-302, MCA 1991; redes. 19-20-302 by Code Commissioner, 1993; amd. Sec. 4, Ch. 111, L. 1995; amd. Sec. 10, Ch. 308, L. 1995; amd. Sec. 108, Ch. 42, L. 1997; amd. Sec. 5, Ch. 111, L. 1999; amd. Sec. 5, Ch. 45, L. 2001; amd. Sec. 3, Ch. 402, L. 2003; amd. Sec. 3, Ch. 320, L. 2005; amd. Sec. 4, Ch. 90, L. 2007; amd. Sec. 2, Ch. 282, L. 2009; amd. Sec. 8, Ch. 282, L. 2013; amd. Sec. 29, Ch. 248, L. 2015; amd. Sec. 1, Ch. 165, L. 2017; amd. Sec. 3, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

Legislators — continued participation, 5-2-304.
University System retirement program, Title 19, ch. 21.
University System retirement program — effect on rights under teachers' retirement system, 19-21-202.
Community college district nonteaching employees — nonapplicability, 20-15-106.
Community college district teachers covered by teachers' retirement system, 20-15-106.
Community college district employees covered by public employees' retirement system, 20-15-106.

19-20-303. Inactive membership — dormant membership status. (1) A nonvested or vested member's active membership in the retirement system terminates and the member becomes an inactive member when the member ceases to be employed in a position reportable to the retirement system.

(2) A vested member becomes an inactive member of the teachers' retirement system if the member becomes an active member of another retirement or pension system supported wholly or in part by the money of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in both retirement systems. However, the member may not be excluded from active membership in the teachers' retirement system solely because the person is receiving or is eligible to receive retirement benefits from another retirement system.

(3) A vested inactive member must be transferred to dormant membership status if, by the member's required minimum distribution beginning date, the member cannot be located for involuntary retirement as described in 19-20-703(3) or has not taken one of the following actions:

(a) elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603;

(b) apply to receive retirement benefits under part 8 or part 9 of this chapter; or

(c) return to active membership.

(4) A nonvested inactive member must be transferred to dormant membership status if the member fails to take one of the following actions within 7 years after becoming an inactive member:

(a) elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603; or

(b) return to active membership.

(5) With respect to a member in dormant membership status:

(a) the retirement system shall no longer attempt to locate or contact the member or send communications or annual statements to the member; and

(b) the retirement system shall transfer the amount in the member's annuity savings account to the pension accumulation account and the amount may not be credited with additional interest while the member is in a dormant membership status.

(6) If a vested inactive member in dormant membership status takes an action described in subsection (3), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance and credit the interest that would have been earned if the member had not been transferred to dormant status.

(7) If a nonvested inactive member in dormant membership status takes an action described in subsection (4), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance and credit the interest that would have been earned if the member had not been transferred to dormant status.

(8) Nothing in this section affects the rights, benefits, obligations, or liabilities provided for under this chapter if a member dies in a dormant membership status.

History: En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210; Sec. 19-4-303, MCA 1991; redes. 19-20-303 by Code Commissioner, 1993; amd. Sec. 259, Ch. 56, L. 2009; amd. Sec. 3, Ch. 276, L. 2019; amd. Sec. 3, Ch. 173, L. 2021; amd. Sec. 4, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

Social Security coverage for teachers, Title 19, ch. 1, part 8.

Community college teachers eligible, 20-15-106.

19-20-304. Repealed. Sec. 22, Ch. 276, L. 2019.

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211; Sec. 19-4-304, MCA 1991; redes. 19-20-304 by Code Commissioner, 1993; amd. Sec. 260, Ch. 56, L. 2009.

19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member's or retiree's retirement benefit;

(c) "family law order" means a certified copy of an order of a court with competent jurisdiction, on a form prescribed and provided by the retirement system, concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's right to payments from the retirement system to an alternate payee in compliance with this section; and

(d) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, date of birth, current phone number, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest or by a full renunciation of the alternate payee's rights by the alternate payee.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment that is not available to the affected participant under the retirement system or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(iii) A copy of the alternate payee's birth certificate must be submitted with the family law order.

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a lump-sum payment up to the total fixed amount or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned between the participant and the alternate payee receiving an actuarially equivalent amount in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order and approval of the family law order by the retirement system.

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise transferred by the alternate payee.

(b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.

(13) The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law.

History: **En. Sec. 9, Ch. 111, L. 1995; amd. Sec. 8, Ch. 442, L. 1997; amd. Sec. 5, Ch. 90, L. 2007; amd. Sec. 3, Ch. 282, L. 2009; amd. Sec. 5, Ch. 59, L. 2011; amd. Sec. 2, Ch. 39, L. 2017.**

19-20-306. Execution or withholding for support obligation. (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-1046 through 40-5-1051.

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) "Support obligation" has the meaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

History: **En. Sec. 15, Ch. 552, L. 1997.**

19-20-307. Establishing independent contractor status. (1) (a) An individual working in a position reportable to the retirement system is presumed to be a common law employee of the employer and not an independent contractor.

(b) Until the status of an individual working in a position reportable to the retirement system is conclusively established to be that of an independent contractor, the individual must be reported to the retirement system as an active member or working retiree, as appropriate, not as an independent contractor.

(2) (a) An employer who asserts that an individual working in a position reportable to the retirement system is an independent contractor shall conclusively establish that the individual is an independent contractor and not a common law employee of the employer by:

(i) a written determination prepared by an attorney, an employment or human resources professional, or another individual who is qualified to make worker status determinations;

(ii) an order of a court of competent jurisdiction; or

(iii) internal revenue service form SS-8.

(b) (i) An individual making the determination must provide with their written determination their full name, professional designations, business name, business address, and business telephone number.

(ii) The written determination or order must comprehensively address the internal revenue service criteria related to the facts and circumstances of the specific worker in the specific position at issue and must provide a reasoned discussion of each criterion and its application to the specific facts and circumstances of the work and the position, not merely provide a conclusory statement of finding.

(iii) An independent contractor exemption certificate by the Montana department of labor and industry must meet all of the requirements of this subsection (2).

(3) Any costs incurred to conclusively establish the independent contractor status of an individual working in a position reportable to the retirement system, as specified in this section, must be the sole responsibility of the employer.

History: **En. Sec. 1, Ch. 245, L. 2023.**

Part 4
Creditable Service

Part Cross-References

The Public Employees' Retirement Act — general provisions — service credit, Title 19, ch. 2, part 7.

19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302.

(2) Subject to 19-20-405, the creditable service of a member includes the following:

(a) each period of active membership service in a position reportable to the retirement system as described in 19-20-302 and credited as provided in this section;

(b) any creditable service awarded by the retirement board under 19-20-402 for out-of-state employment;

(c) any creditable service awarded by the retirement board under 19-20-403 for employment while on leave;

(d) any creditable service awarded by the retirement board under 19-20-404 for service in the military, the red cross, or the merchant marine;

(e) any creditable service awarded by the retirement board under 19-20-408 for employment in private schools;

(f) any creditable service awarded by the retirement board under 19-20-409 for service transferred after October 1, 1989, from the public employees' retirement system;

(g) any creditable service awarded by the retirement board under 19-20-410 for extension service employment;

(h) any creditable service awarded by the retirement board under 19-20-411 for absence because of employment-related injury; and

(i) any creditable service awarded by the retirement board under 19-20-426 for service provided under the university system retirement program.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) Creditable service may be awarded only for a period of membership service or purchased service for which all required contributions and interest, if applicable, have been paid.

(5) All accrued creditable service must be forfeited upon withdrawal from the retirement system and may not be reinstated unless the member redeposits the withdrawn contributions as set forth in 19-20-427.

(6) Creditable service must be awarded on the basis of a fiscal year beginning July 1 and ending June 30 regardless of the member's term of employment service or benefit accrual as established in an employment agreement, in an employer policy, or in another manner and regardless of the term of the employer's school year or fiscal year.

(7) Creditable service must be credited based on the full-time or part-time service of the member, as follows:

(a) Service provided over 7 or more hours in a day is a full-time day.

(b) Full-time service is service that is at least 180 days in a fiscal year, at least 140 hours a month during 9 months in a fiscal year, or full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.

(c) Part-time service is service that is less than full-time. Part-time creditable service must be calculated based on the total number of hours, days, or months reported to the retirement system in each fiscal year, divided by the number of hours, days, or months of equivalent full-time service.

(8) Creditable service and earned compensation credit must be awarded for extra duty service subject to the following:

(a) A member who is credited with full-time creditable service without consideration of the extra duty service may not be awarded additional creditable service for the extra duty service, and the extra duty compensation must be reported and credited as earned compensation to the member.

(b) A member who is credited with less than full-time creditable service without consideration of the extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).

(c) A member who is not employed in a position reportable to the retirement system other than to perform extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).

(d) (i) If the member is employed by the employer to perform service other than the extra duty service, whether or not in a position reportable to the retirement system, and is compensated for that service on an hourly or daily basis, the employer must report the actual number of hours or days worked in extra duty service with compensation at the hourly or daily rate of pay that the employee earns for service other than extra duty service. The compensation reported for extra duty service must include any increase in the rate of pay or total compensation required to be paid for overtime. Creditable service must be awarded on the basis of the actual time worked in extra duty service.

(ii) If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated at an hourly or daily rate of pay, the employer must report the actual hours or days worked, the hourly or daily rate of pay, and the total compensation paid for the extra duty service. Creditable service must be awarded based on the actual time worked in extra duty service.

(iii) If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated on a single fee or stipend basis:

(A) the employer must report the total fee or stipend paid for the extra duty service and must provide the retirement system with the employer's base rate of pay for an entry-level teacher for the fiscal year in which the extra duty service is provided; and

(B) creditable service must be awarded for the extra duty service based on the following calculations:

(I) the base rate of pay must be divided by 187 to determine a daily rate of pay;

(II) the total fee or stipend must be divided by the daily rate of pay to determine the number of days eligible for creditable service; and

(III) the number of days eligible for creditable service must be divided by 180 to determine the portion of a year to be credited as creditable service for the extra duty service.

(9) Creditable service may not be awarded in excess of full-time service for any period of time regardless of the amount of time actually worked in the time period. No more than 1 day of creditable service may be awarded for any calendar day, no more than 1 month of creditable service may be awarded for any calendar month, and no more than 1 year of creditable service may be awarded for any fiscal year. Service may not be carried over or otherwise reported for the accrual of creditable service in any month other than the month in which the service was actually performed.

(10) For a member completing only part-time service during the fiscal year of membership service on which a service purchase cost will be calculated, the member's compensation must be annualized to calculate the service purchase cost.

(11) A member may not purchase creditable service under this part after retirement benefit payments to the member have started, even if the member returns to active member status.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981; amd. Sec. 2, Ch. 38, L. 1987; amd. Sec. 2, Ch. 79, L. 1987; amd. Sec. 3, Ch. 56, L. 1989; amd. Sec. 2, Ch. 690, L. 1989; Sec. 19-4-401, MCA 1991; redes. 19-20-401 by Code Commissioner, 1993; amd. Sec. 4, Ch. 320, L. 2005; amd. Sec. 4, Ch. 282, L. 2009; amd. Sec. 12, Ch. 210, L. 2015; amd. Sec. 3, Ch. 39, L. 2017.

19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's out-of-state service and contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's salary earned in a position reportable to the retirement system after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979; amd. Sec. 2, Ch. 113, L. 1989; amd. Secs. 1, 5, Ch. 357, L. 1989; Sec. 19-4-402, MCA 1991; redes. 19-20-402 by Code Commissioner, 1993; amd. Sec. 1, Ch. 136, L. 1995; amd. Sec. 6, Ch. 45, L. 2001; amd. Sec. 5, Ch. 174, L. 2003; amd. Sec. 2, Ch. 151, L. 2011; amd. Sec. 13, Ch. 210, L. 2015.

19-20-403. Creditable service for employment while on leave. (1) (a) Subject to 19-20-405, a member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave following a break in service.

(b) To be eligible to purchase the service, a member:

(i) must be vested in the retirement system;

(ii) must have been an active member prior to the leave; and

(iii) must have earned at least 1 full year of creditable service in active membership in the retirement system subsequent to the member's leave.

(2) (a) For each period of service to be credited, a member who became a member before July 1, 1989, shall contribute an amount equal to the combined employer and employee contributions for the member's first full year's salary earned in a position reportable to the retirement system after the member's return from leave, plus interest.

(b) For each period of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(c) The interest on contributions required under subsection (2)(a) must be paid:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(d) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(3) Subject to 19-20-405, a member who is eligible under subsection (5) and who contributes to the retirement system as provided in subsection (6) may receive up to 2 years of creditable service for unpaid inservice leave.

(4) (a) To be eligible for purchase as inservice leave, the leave must be:

(i) a period of temporary absence from work in a position reportable to the retirement system, whether full leave or intermittent leave and whether the leave is provided solely at the discretion of the employer or is required to be provided pursuant to generally applicable state or federal law; and

(ii) unpaid. Inservice leave is unpaid to the extent that the employer is not compensating the member for the period of absence from work. If the inservice leave is intermittent leave or is partially paid full leave, the leave is unpaid to the extent that any compensation received for the day, week, or month that includes the leave is less than the amount of compensation the member would have earned but for the leave.

(b) Inservice leave does not include:

(i) a period of leave or other absence from work that is included as part of the member's regular term of employment, such as personal days, vacation leave, sick leave, summer break, or other nonwork days;

(ii) a period of time for which creditable service may be purchased or credited under any other section of this part;

(iii) a period designated as a leave of absence pursuant to an oral or written settlement agreement or other agreement between the member and the employer to resolve an employment dispute and resulting in:

(A) termination of the member's employment; or

(B) other circumstances in which the member and employer do not actually intend for the member to return to regular employment in the preleave position; or

(iv) a leave of absence after which the member does not actually return to regular employment in the preleave position.

(5) A member is eligible to purchase inservice leave if the member:

(a) was regularly employed by the preleave employer with a regular work schedule in a position reportable to the retirement system;

(b) remained either employed or in a job-attached status with the preleave employer with a definite date specified to return to work with the preleave employer; and

(c) returned to regular work with the preleave employer at the end of the inservice leave.

(6) (a) An eligible member may purchase inservice leave at any time after returning to regular work with the preleave employer in a position reportable to the retirement system, subject to the following:

(i) A service purchase agreement for the inservice leave must be established for all leave that may be purchased for a fiscal year following the end of that fiscal year.

(ii) The service must be purchased and will be credited beginning with the earliest date of the leave.

(iii) The amount of leave that may be purchased may not exceed the amount of time that the member would have worked but for the leave as specified in a written employment contract. If the member was not employed under a written employment contract, the amount of leave purchased may not result in the member receiving total creditable service in the fiscal year in which the service is being purchased that exceeds the amount of creditable service the member accrued in the last fiscal year preceding the inservice leave during which the member accrued membership service that did not include purchased service.

(b) To purchase inservice leave, the member shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system subject to the following:

(i) Upon completing the purchase, the member must receive earned compensation credit equal to the sum of any earned compensation reported by the employer plus the amount of compensation attributable to the purchased leave.

(ii) Failure to return for any reason to regular work in the preleave position on the specified return date or at the end of the inservice leave must be considered a break in service subject to the leave purchase requirements of subsections (1) and (2).

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2); amd. Sec. 3, Ch. 113, L. 1989; amd. Secs. 2, 5, Ch. 357, L. 1989; Sec. 19-4-403, MCA 1991; redes. 19-20-403 by Code Commissioner, 1993; amd. Sec. 2, Ch. 136, L. 1995; amd. Sec. 7, Ch. 45, L. 2001; amd. Sec. 3, Ch. 151, L. 2011; amd. Sec. 14, Ch. 210, L. 2015; amd. Sec. 4, Ch. 39, L. 2017.

Cross-References

Reemployment of public employee upon completion of military service,10-2-221.
School district employee's official vacation absence counted as service, 19-3-401.
PERS — absence due to illness or injury, 19-3-504.
Reinstatement to job following pregnancy-related leave of absence, 49-2-311.

19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) Subject to 19-20-405, a vested member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) (a) If a vested member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or the merchant marine. The member must be awarded creditable service for the number of years, not exceeding 2, that the retirement board determines to be creditable service if the member contributes to the retirement system an amount equal to the combined employer and employee contributions for the member's first full year's salary earned in a position reportable to the retirement system following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest paid as follows:

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the member's account upon completion of 5 years of membership service in Montana; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(b) The contribution rate is that rate in effect at the time the member is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981; amd. Sec. 4, Ch. 113, L. 1989; amd. Sec. 1, Ch. 204, L. 1989; amd. Sec. 1, Ch. 185, L. 1993; Sec. 19-4-404, MCA 1991; redes. 19-20-404 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1999; amd. Sec. 34, Ch. 7, L. 2001; amd. Sec. 8, Ch. 45, L. 2001; amd. Sec. 4, Ch. 151, L. 2011; amd. Sec. 15, Ch. 210, L. 2015.

Cross-References

PERS — election to qualify military service, 19-3-503.
Highway patrol retirement — election to qualify military service, 19-6-801.
Sheriffs' retirement — election to qualify previous military service, 19-7-803.
Game wardens' and peace officers' retirement — election to qualify military service, 19-8-901.
Police retirement — statewide plan — election to qualify previous military service, 19-9-403.
Firefighters' unified retirement — election to qualify previous military service, 19-13-403.
Police retirement — local funds — credit for military service, 19-19-405.
Police retirement — local funds — election to qualify previous military service, 19-19-406.

19-20-405. Limit on creditable service that may be awarded. The aggregate years of service that may be credited under 19-20-402 through 19-20-404, 19-20-408, 19-20-410(1), and 19-20-426 may not exceed 5 years.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4); amd. Sec. 3, Ch. 79, L. 1987; Sec. 19-4-405, MCA 1991; redes. 19-20-405 by Code Commissioner, 1993; amd. Sec. 3, Ch. 136, L. 1995; amd. Sec. 1, Ch. 408, L. 1997; amd. Sec. 7, Ch. 111, L. 1999; amd. Sec. 6, Ch. 59, L. 2011; amd. Sec. 16, Ch. 210, L. 2015.

19-20-406. Repealed. Sec. 20, Ch. 282, L. 2009.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5); Sec. 19-4-406, MCA 1991; redes. 19-20-406 by Code Commissioner, 1993.

19-20-407. No duplication of credit for same period of service. A member may not receive duplicate credit for the same period of service. A retiree returning to active service may not be granted creditable service for the same period of time that the retiree was receiving a retirement benefit.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9); Sec. 19-4-407, MCA 1991; redes. 19-20-407 by Code Commissioner, 1993; amd. Sec. 2, Ch. 408, L. 1997; amd. Sec. 5, Ch. 320, L. 2005.

Cross-References

The Public Employees' Retirement Act — no duplication of benefits for same period of service, 19-2-703.

19-20-408. Creditable service for employment in private schools. (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's private school employment and contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's salary earned in a position reportable to the retirement system after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. Sec. 1, Ch. 551, L. 1981; amd. Sec. 5, Ch. 113, L. 1989; Sec. 19-4-408, MCA 1991; redes. 19-20-408 by Code Commissioner, 1993; amd. Sec. 4, Ch. 136, L. 1995; amd. Sec. 9, Ch. 45, L. 2001; amd. Sec. 5, Ch. 151, L. 2011; amd. Sec. 12, Ch. 55, L. 2015; amd. Sec. 17, Ch. 210, L. 2015.

Cross-References

Education — accreditation and curriculum of schools, Title 20, ch. 7, part 1.

19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) (a) An active member may at any time before retirement file a written application with the teachers' retirement system to transfer all of the member's service credit then on account with the public employees' retirement system to the teachers' retirement system if the following requirements are met:

(i) the member is eligible to withdraw from the public employees' retirement system; and

(ii) member and employer contributions are directly transferred from the public employees' retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).

(b) The public employees' retirement system shall transfer employer contributions to the teachers' retirement system in an amount equal to 72% of the amount of member contributions and accrued interest to be transferred as provided in subsection (1)(c).

(c) The public employees' retirement system shall transfer member contributions to the teachers' retirement system in an amount equal to the total amount of the member's contributions then on account with the public employees' retirement system, plus all interest accrued on the member contributions from the date of deposit until the date the transfer is received by the teachers' retirement system. Interest must be based on the interest tables in use by the public employees' retirement system.

(d) (i) On completion of the transfer, the teachers' retirement system shall credit the member with creditable service equal to the service credit that had been on account with the public employees' retirement system, subject to limitation as provided in 19-20-401(9).

(ii) The transferred service credit must count toward vesting in a benefit with the teachers' retirement system. If, at the time of retirement, the member does not have sufficient years of membership service with the teachers' retirement system to calculate the members' average final compensation under plan terms, compensation must be credited to the period of transferred service credit necessary to calculate the member's average final compensation as provided in 19-20-805(4).

(iii) A member who transfers service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, or 19-20-426.

(2) (a) The beneficiary of a member of the teachers' retirement system who dies while an active member and while also having service credit on account with the public employees' retirement system may apply to have the deceased member's service transferred from the public employees' retirement system to the teachers' retirement system if the following requirements are met:

(i) the member had not previously retired under either retirement system;

(ii) the member was not vested in a benefit with either retirement system at the time of death;

(iii) the member's creditable service following transfer will entitle the beneficiary to receive a survivor benefit from the teachers' retirement system in the form of a monthly benefit payable for the beneficiary's lifetime;

(iv) at least one eligible beneficiary will elect the lifetime benefit;

(v) each beneficiary entitled to payment on behalf of the deceased member from either retirement system prior to transfer must be an individual and must also be a beneficiary entitled to payment on behalf of the deceased member from the other retirement system; and

(vi) the transfer of service credit from the public employees' retirement system must constitute a full withdrawal of the deceased member's service credit from the public employees' retirement system.

(b) Member and employer contributions must be transferred directly from the public employees' retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).

(c) (i) On completion of the transfer, the teachers' retirement system shall credit the member with creditable service equal to the service credit that had been on account with the public employees' retirement system.

(ii) If the member does not have sufficient years of membership service with the teachers' retirement system to calculate the member's average final compensation under plan terms, compensation must be credited to the period of transferred service credit necessary to calculate the member's average final compensation as provided in 19-20-805(4).

(3) (a) If the teachers' retirement system determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement system shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (3) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the employer where the error occurred.

(4) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member is vested in the teachers' retirement system and has completed at least 1 full year of active membership in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (4), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (4).

(5) Creditable service purchased under subsection (4) must be determined according to the laws and rules governing service credit in the public employees' retirement system.

History: En. Sec. 2, Ch. 290, L. 1983; amd. Sec. 3, Ch. 690, L. 1989; amd. Sec. 2, Ch. 64, L. 1991; Sec. 19-4-409, MCA 1991; redes. 19-20-409 by Code Commissioner, 1993; amd. Sec. 26, Ch. 412, L. 1995; amd. Sec. 9, Ch. 442, L. 1997; amd. Sec. 10, Ch. 45, L. 2001; amd. Sec. 5, Ch. 282, L. 2009; amd. Sec. 3, Ch. 366, L. 2013; amd. Sec. 3, Ch. 389, L. 2013; amd. Sec. 18, Ch. 210, L. 2015; amd. Sec. 3, Ch. 245, L. 2023.

19-20-410. Creditable service for extension service employment. (1) (a) Subject to 19-20-405, at any time before retirement, a vested member may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's salary earned in a position reportable to the retirement system subsequent to the member's extension service employment, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the member becoming vested; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

History: En. Sec. 1, Ch. 79, L. 1987; amd. Sec. 6, Ch. 113, L. 1989; Sec. 19-4-410, MCA 1991; redes. 19-20-410 by Code Commissioner, 1993; amd. Sec. 3, Ch. 408, L. 1997; amd. Sec. 11, Ch. 45, L. 2001; amd. Sec. 6, Ch. 151, L. 2011; amd. Sec. 13, Ch. 55, L. 2015; amd. Sec. 19, Ch. 210, L. 2015.

19-20-411. Absence because of employment-related injury. (1) Subject to the limitation in subsection (6), a member who is absent because of an injury entitling the member to workers' compensation payments may purchase as creditable service the time during which the member is absent. To purchase this service, a member shall contribute to the retirement system as provided in subsection (2) upon the member's return to contributing membership service.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions that the member would have made had the member not been absent, based on the member's compensation at the commencement of the absence;

(ii) the interest that begins to accrue 1 year from the date that the member returns to covered employment; and

(iii) the interest not paid by the employer under subsection (3).

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

(3) When a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to the contributions that would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of the absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (2)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(4) A member shall file with the retirement board a written notice of the member's intent to pay the contributions under subsection (2).

(5) Payment of the employee's contributions may be made in one sum at the time of filing the notice or in installments before termination of covered employment as agreed between the board and the member.

(6) A member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated normal contributions are refunded under 19-20-603.

(7) The maximum amount of membership service allowable under this section is 2 years.

History: En. Sec. 1, Ch. 38, L. 1987; amd. Sec. 7, Ch. 113, L. 1989; Sec. 19-4-411, MCA 1991; redes. 19-20-411 by Code Commissioner, 1993; amd. Sec. 5, Ch. 136, L. 1995; amd. Sec. 12, Ch. 45, L. 2001.

19-20-412. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 113, L. 1989; amd. Sec. 1, Ch. 8, L. 1991; Sec. 19-4-412, MCA 1991; redes. 19-20-412 by Code Commissioner, 1993; amd. Sec. 6, Ch. 136, L. 1995; amd. Sec. 10, Ch. 442, L. 1997.

19-20-413. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 13, L. 1991; Sec. 19-4-413, MCA 1991; redes. 19-20-413 by Code Commissioner, 1993.

19-20-414. Payment methods for purchase of service credit. (1) An active or vested member who is eligible to purchase service under this chapter may at any time before retirement apply to purchase the service credit by making payment as provided in this section.

(2) Subject to subsection (3), service credit may be purchased by one or a combination of the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) may not exceed the amount due to purchase the service.

(b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by this section, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits.

History: En. Sec. 10, Ch. 111, L. 1995; amd. Sec. 8, Ch. 111, L. 1999; amd. Sec. 13, Ch. 45, L. 2001; amd. Sec. 6, Ch. 174, L. 2003; amd. Sec. 6, Ch. 90, L. 2007.

19-20-415. Procedure for purchase of service credit and pick up. (1) A member who wishes to redeposit, pursuant to 19-20-427, amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void, and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. Sec. 9, Ch. 111, L. 1999; amd. Sec. 14, Ch. 45, L. 2001; amd. Sec. 6, Ch. 320, L. 2005.

19-20-416. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes an amount equal to the member contributions that would have been made if the legislator had elected membership plus interest paid as follows:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned if they had been on deposit with the retirement system; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

History: En. Sec. 10, Ch. 111, L. 1999; amd. Sec. 7, Ch. 151, L. 2011.

19-20-417. Credit for substitute teaching service, part-time teacher's aide service, paraprofessional service, or other service not reported. (1) A substitute teacher, part-time teacher's aide, or paraprofessional who has filed an irrevocable election not to participate in the retirement system for the first 210 hours of service under 19-20-302 and who later becomes an active member may be awarded creditable service for the 210 or more hours of service provided in the single fiscal year in which the 210-hour threshold results in the individual's active membership. To be awarded the creditable service, the member shall contribute the regular employee and employer contributions that would have been made if the member had elected membership from the first date of service in that fiscal year, plus interest at the current actuarial assumed rate of investment return.

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member within the same fiscal year may purchase the first 30 days of service if the member contributes the employee and employer contributions that would have been made if the person had been a member from the first date of service in that fiscal year, plus interest at the current actuarial assumed rate of investment return.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest at the current actuarial assumed rate of investment return.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed to between the person and the board.

(5) Only one service purchase may be made by any member under subsection (1) or (2).

History: En. Sec. 11, Ch. 111, L. 1999; amd. Sec. 15, Ch. 45, L. 2001; amd. Sec. 4, Ch. 245, L. 2023; amd. Sec. 5, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 136, L. 2025. Amendment effective July 1, 2025.

19-20-418 through 19-20-425 reserved.

19-20-426. Creditable service for employment under university system retirement program. (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's participation in the university system retirement program pursuant to 19-21-201 and contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the university system retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. Sec. 7, Ch. 320, L. 2005; amd. Sec. 9, Ch. 282, L. 2013; amd. Sec. 20, Ch. 210, L. 2015.

19-20-427. Redeposit of contributions previously withdrawn. (1) Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-608, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415.

(3) A member may not redeposit contributions previously withdrawn under this chapter after retirement benefit payments to the member have started, even if the member returns to active member status.

(4) Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-908, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, an active member may purchase service credit previously accrued and withdrawn from the Montana public employees' retirement system by redeposit directly to the teachers' retirement system, subject to the following:

(a) the member is not an active member or an inactive member of the public employees' retirement system;

(b) the member has not previously used or transferred the same period of service withdrawn from the public employees' retirement system to purchase service in any other public retirement system;

(c) member and employer contributions and interest must be paid to the teachers' retirement system as follows:

(i) The member shall remit member contributions in an amount equal to the sum of the accumulated contributions that were refunded to the individual at the individual's last termination of membership in the public employees' retirement system plus interest at the actuarially assumed interest rate of the teachers' retirement system in effect on the date the written application is signed. Interest must be calculated from the date of refund from the public employees' retirement system until paid in full to the teachers' retirement system.

(ii) The public employees' retirement system shall transfer employer contributions to the teachers' retirement system in an amount equal to 72% of the member contributions and interest payable by the member as provided in subsection (4)(c)(i).

(d) a member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, or 19-20-426.

History: En. Sec. 9, Ch. 320, L. 2005; amd. Sec. 7, Ch. 90, L. 2007; amd. Sec. 8, Ch. 151, L. 2011; amd. Sec. 4, Ch. 389, L. 2013; amd. Sec. 21, Ch. 210, L. 2015; amd. Sec. 5, Ch. 245, L. 2023.

Cross-References

Withdrawal of accumulated contributions — options, 19-20-603.

Part 5
Management of Funds

Part Cross-References

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Firefighters' retirement — management and protection of fund, Title 19, ch. 18, part 2.

Police retirement — local funds — management of police retirement funds, Title 19, ch. 19, part 2.

Retirement fund, 20-9-501.

19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest.

(3) In accordance with the provisions of 19-20-605(8), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983; amd. Sec. 2, Ch. 8, L. 1991; Sec. 19-4-501, MCA 1991; redes. 19-20-501 by Code Commissioner, 1993; amd. Sec. 34, Ch. 532, L. 1997; amd. Sec. 16, Ch. 45, L. 2001; amd. Sec. 8, Ch. 90, L. 2007; amd. Sec. 5, Ch. 305, L. 2007; amd. Sec. 2, Ch. 298, L. 2009.

Cross-References

Investment of public funds and retirement system assets, Art. VIII, sec. 13, Mont. Const.

Public retirement system assets, Art. VIII, sec. 15, Mont. Const.

Housing authority bonds as legal investments, 7-15-4505.

Investment in economic development bonds, 17-5-1525.

Unified investment program — general provisions, 17-6-201.

Separate investment funds, 17-6-203.

Permissible investments, 17-6-211.

The Public Employees' Retirement Act — general provisions — management and investment of pension trust funds, Title 19, ch. 2, part 5.

Firefighters' retirement — investment of fund by trustees, 19-18-402.

Police retirement — local funds — investment of fund, 19-19-203.

Credit unions — authority to receive state deposits, 32-3-401.

Investment in Montana Facility Finance Authority bonds, 90-7-113.

19-20-502. Restrictions on use of money. (1) A member of the retirement board or an employee of the board may not:

(a) have an interest, directly or indirectly, in the gains or profits of any investment of money of the retirement system, except as provided in this section;

(b) directly or indirectly, for the member or employee or as an agent, in any manner use the money or deposits of the retirement system except to make current and necessary expenditures authorized by the retirement board; or

(c) become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(4) The assets of the retirement system must remain in trust until a warrant for the assets has been paid or an electronic funds transfer of system assets has been made in accordance with law.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8); Sec. 19-4-502, MCA 1991; redes. 19-20-502 by Code Commissioner, 1993; amd. Sec. 12, Ch. 111, L. 1999; amd. Sec. 17, Ch. 45, L. 2001.

Cross-References

The Public Employees' Retirement Act — restrictions on use of fund, 19-2-505.
Police retirement — local funds — limit on use of fund, 19-19-202.

19-20-503. Forfeiture of unclaimed account balances or benefits. (1) A benefit or refund of the member's account balance must be claimed within 5 years after the date of the member's death.

(2) If the benefit or refund is not claimed within the time provided in subsection (1), the member's account balance is forfeited and reverts to the pension trust fund.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6); Sec. 19-4-503, MCA 1991; redes. 19-20-503 by Code Commissioner, 1993; amd. Sec. 11, Ch. 442, L. 1997; amd. Sec. 9, Ch. 90, L. 2007; amd. Sec. 4, Ch. 276, L. 2019.

Cross-References

The Public Employees' Retirement Act — transfer of dormant, nonvested member-accumulated contributions, 19-2-1003.

19-20-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9); Sec. 19-4-504, MCA 1991; redes. 19-20-504 by Code Commissioner, 1993.

Cross-References

The Public Employees' Retirement Act — vesting of retirement benefits upon termination of system, 19-2-1002.

19-20-505 through 19-20-509 reserved.

19-20-510. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

Part 6
Funds — Contributions

Part Cross-References

PERS — member's contributions, 19-3-315.
PERS — employer contributions, 19-3-316.
Judges' retirement fund — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — state and employer contributions, 19-9-702, 19-9-703.
Police retirement — statewide plan — member's contributions, 19-9-710.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
University System retirement program — contributions, 19-21-203.

19-20-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1); Sec. 19-4-601, MCA 1991; redes. 19-20-601 by Code Commissioner, 1993.

Cross-References

Retirement fund, 20-9-501.

19-20-602. Annuity savings account — member's contribution. (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member.

(2) (a) The normal contribution rate of each tier one member is 7.15% of the member's earned compensation.

(b) The normal contribution rate of each tier two member is 8.15% of the member's earned compensation.

(3) Contributions under 19-20-608 and this section to the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (3) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(4) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings account to the pension accumulation account.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983; amd. Sec. 7, Ch. 464, L. 1985; Sec. 19-4-602, MCA 1991; redes. 19-20-602 by Code Commissioner, 1993; amd. Sec. 5, Ch. 111, L. 1995; amd. Sec. 12, Ch. 442, L. 1997; amd. Sec. 13, Ch. 111, L. 1999; amd. Sec. 4, Ch. 360, L. 1999; amd. Sec. 8, Ch. 320, L. 2005; amd. Sec. 10, Ch. 90, L. 2007; amd. Sec. 5, Ch. 389, L. 2013.

19-20-603. Withdrawal from membership — refund of accumulated contributions — options. (1) (a) An inactive member may apply at any time to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions.

(b) An active member may apply to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions no sooner than 30 days before the date of the member's termination from employment in all positions reportable to the retirement system.

(c) The application must be made on a form or in a manner prescribed by the retirement system and is not complete until all required supporting documentation is provided. The application is void if the documentation is not provided within 60 days after the application date.

(2) The retirement system shall refund a withdrawing member's accumulated contributions after the latest of the following dates:

(a) the last day of the month in which the member terminated employment in all positions reportable to the retirement system;

(b) the last day of the last month for which the employer reported to the retirement system compensation paid to the member; or

(c) the date that the member's application to withdraw is complete.

(3) A member's withdrawal and refund under this section:

(a) is irrevocable after the refund has been processed by the retirement system;

(b) constitutes forfeiture of the member's creditable service and any right to a benefit pursuant to that service;

(c) terminates the member's membership in the retirement system; and

(d) terminates a withdrawn tier one member's status as a tier one member.

(4) An individual who has withdrawn and later returns to employment in a position reportable to the retirement system may purchase the forfeited creditable service as provided in 19-20-427. However, a tier one member who withdraws and returns to employment in a position reportable to the retirement system must return as a tier two member even if the member purchases the forfeited creditable service.

(5) The withdrawal application of a member is void if the member is reported to the retirement system for current employment in a position reportable to the retirement system before the refund is processed.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6); amd. Sec. 1, Ch. 226, L. 1993; Sec. 19-4-603, MCA 1991; redes. 19-20-603 by Code Commissioner, 1993; amd. Sec. 13, Ch. 442, L. 1997; amd. Sec. 14, Ch. 111, L. 1999; amd. Sec. 18, Ch. 45, L. 2001; amd. Sec. 11, Ch. 90, L. 2007; amd. Sec. 6, Ch. 282, L. 2009; amd. Sec. 5, Ch. 276, L. 2019.

Cross-References

The Public Employees' Retirement Act — refund of member's contributions on termination of service, 19-2-602.

19-20-604. *(Temporary)* **State contributions — termination.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.11% of the compensation of members participating in the system on or after July 1, 1999. The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The state contribution provided for in this section terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The board shall certify amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week. *(Terminates on occurrence of contingency—sec. 10, Ch. 360, L. 1999.)*

History: En. Sec. 2, Ch. 360, L. 1999.

Compiler's Comments

Contingent Termination: Section 10, Ch. 360, L. 1999, provided: "[Sections 2 and 3] [enacting 19-20-604 and amending 17-7-502] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency."

19-20-605. Pension accumulation account — employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Employer contributions to the pension accumulation account must be made as provided in 19-20-609 and this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of total earned compensation, plus the supplemental contribution required under 19-20-609.

(3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation, plus the supplemental contribution required under 19-20-609.

(4) Beginning July 1, 2013, for each retired member who returns to covered employment under the provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member, plus the supplemental contribution required under 19-20-609.

(5) (a) If the employer is a school district or a community college district created prior to January 1, 2021, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(b) If the employer is a community college district created on or after January 1, 2021, the trustees shall budget and pay for the employer's contribution from the district's current unrestricted subfund.

(6) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(7) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(8) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983; amd. Sec. 3, Ch. 658, L. 1985; amd. Sec. 2, Ch. 204, L. 1989; amd. Sec. 2, Ch. 530, L. 1993; Sec. 19-4-605, MCA 1991; redes. 19-20-605 by Code Commissioner, 1993; amd. Sec. 14, Ch. 442, L. 1997; amd. Sec. 35, Ch. 532, L. 1997; amd. Sec. 12, Ch. 90, L. 2007; amd. Sec. 6, Ch. 305, L. 2007; amd. Sec. 7, Ch. 282, L. 2009; amd. Sec. 3, Ch. 298, L. 2009; amd. Sec. 7, Ch. 389, L. 2013; amd. Sec. 5, Ch. 351, L. 2021.

19-20-606. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5); amd. Sec. 2, Ch. 328, L. 1985; Sec. 19-4-606, MCA 1991; redes. 19-20-606 by Code Commissioner, 1993.

19-20-607. Supplemental state contribution — appropriation. (1) (a) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to 2.38% of the total earned compensation of active members of the employers listed in 19-20-605(3) participating in the system.

(b) (i) Except as provided in subsection (1)(b)(ii), beginning July 1, 2013, and on each July 1 thereafter, the state shall contribute from the general fund to the pension trust fund $25 million as a supplemental contribution to the teachers' retirement system.

(ii) If the legislative finance committee determines that the board has failed to provide a sufficient report pursuant to 19-20-216, it shall recommend that $5 million be subtracted from the amount allocated in subsection (1)(b)(i) subject to legislative approval.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board.

History: **En. Sec. 1, Ch. 305, L. 2007; amd. Sec. 9, Ch. 389, L. 2013; amd. Sec. 6, Ch. 276, L. 2019.**

19-20-608. Member supplemental contribution — actuarially determined adjustments — effective dates. (1) (a) Subject to subsections (1)(b) and (1)(c), a tier one member shall contribute to the retirement system a supplemental amount equal to 1% of the member's earned compensation.

(b) The board may decrease the tier one member supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years.

(c) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(b), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) (a) Subject to subsection (2)(b), on or after January 1, 2023, the board may require a tier two member to contribute to the retirement system a supplemental amount if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%;

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is greater than 20 years; and

(iii) a state or employer contribution rate increase or a flat dollar contribution to the retirement system trust fund has been enacted that is equivalent to or greater than the supplemental contribution rate imposed by the board pursuant to this subsection (2)(a).

(b) A tier two member supplemental contribution increase under this subsection (2) may not:

(i) exceed 0.5% of earned compensation; and

(ii) result in an aggregate tier two member contribution rate of more than 9.15% when added to the normal contribution rate required under 19-20-602.

(c) Following imposition of a supplemental contribution rate increase under this subsection (2), the board may decrease the supplemental contribution rate if:

(i) the average funded ratio of the system based on the previous three annual actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is less than 15 years.

(3) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

History: **En. Sec. 6, Ch. 389, L. 2013.**

19-20-609. Employer's supplemental contribution — actuarially determined adjustments. (1) (a) Subject to subsections (1)(b) through (1)(d), each employer shall contribute to the retirement system a supplemental amount equal to the percentage specified in subsection (1)(b) of total earned compensation of each member employed during the whole or part of the preceding payroll period.

(b) For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (1)(a) is 2%. For fiscal years beginning after June 30, 2027, there is a 0.1% increase each fiscal year through the fiscal year ending June 30, 2047. For fiscal years beginning after June 30, 2047, the percentage of compensation to be contributed under subsection (1)(a) is 4%.

(c) The board may decrease the employer's supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-20-719.

(d) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(c), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

History: En. Sec. 8, Ch. 389, L. 2013; amd. Sec. 30, Ch. 775, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 30, Ch. 775, L. 2025. Amendment effective June 19, 2025.

19-20-610 through 19-20-620 reserved.

19-20-621. Montana university system retirement program supplemental contributions. (1) Each employer within the university system with employees participating in the university system retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The university system retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program is:

(a) 4.04% beginning July 1, 2001, through June 30, 2007; and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

History: En. Sec. 1, Ch. 419, L. 1997; amd. Sec. 7, Ch. 305, L. 2007; amd. Sec. 10, Ch. 282, L. 2013.

19-20-622. Renumbered 19-20-720. Sec. 83, Ch. 7, L. 2001.

Part 7
Benefits in General

Part Cross-References

The Public Employees' Retirement Act — general provisions — management of benefit payments, Title 19, ch. 2, part 9.

University System retirement program — payments, 19-21-211.

19-20-701. Benefits. (1) The retirement, disability, and other benefits of the retirement system must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying that there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.

(2) If a member applies for a retirement benefit but dies before receiving the first monthly benefit allowance, benefits must be paid to the joint annuitant or beneficiary designated on the member's written application for a retirement allowance in the manner provided in 19-20-1001. If the member's written application did not include a designation of a joint annuitant or beneficiary, benefits must be paid to the beneficiary of record in the manner provided in 19-20-1001.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1); Sec. 19-4-701, MCA 1991; redes. 19-20-701 by Code Commissioner, 1993; amd. Sec. 8, Ch. 282, L. 2009; amd. Sec. 7, Ch. 59, L. 2011.

Cross-References

Volunteer Firefighters' Compensation Act — pension benefits, 19-17-404.

Firefighters' retirement — benefits association may provide, 19-18-601.

19-20-702. Optional allowances — joint and survivor annuity — period certain. (1) (a) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form retirement allowance.

(b) Upon the retirement system's processing of a retired member's first monthly benefit payment, the member's benefit election and designation of a joint annuitant if the member elected a joint and survivor annuity allowance is irrevocable, except as provided in subsections (4) and (5).

(2) (a) A joint and survivor annuity optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the joint annuitant in accordance with the option selected under subsection (2)(b).

(b) A member electing to receive a joint and survivor annuity optional allowance may select one of the following options:

(i) Option A—The optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's joint annuitant.

(ii) Option B—The optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will continue throughout the lifetime of the member's joint annuitant.

(iii) Option C—The optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will continue throughout the lifetime of the member's joint annuitant.

(c) The designation of a joint annuitant must be made in the form and manner prescribed by the retirement system and provide all requested information. The joint annuitant will receive both the continuing retirement allowance and the one-time death benefit provided in 19-20-1002(1)(a). The two benefits may not be allocated separately.

(d) Upon election of a joint and survivor optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following period certain allowances that must be paid for the member's lifetime and then to the member's beneficiary as provided in 19-20-1002(3) for the remainder of the period certain if the member dies before receiving monthly benefit payments for the period certain:

(i) a 10-year period certain may be elected if the member is 75 years of age or younger at the time of retirement; or

(ii) a 10-year or 20-year period certain may be elected if the member is 65 years of age or younger at the time of retirement.

(b) Each month for which a benefit is paid is counted as part of the period certain.

(4) (a) Subject to subsection (7), upon written application to the retirement system, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving a joint and survivor annuity optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different joint annuitant if:

(i) the original joint annuitant has died. The benefit must convert to the normal form retirement allowance effective the first of the month following the death of the joint annuitant.

(ii) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must convert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the retirement system shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) Subject to subsection (7), upon written application to the retirement system, a retired member receiving a joint and survivor annuity optional retirement allowance pursuant to subsection (2)(b) that is effective on or after October 1, 1993, may select a different actuarially equivalent optional allowance and designate a different joint annuitant or to revert the optional retirement allowance to the normal form retirement allowance available at the time of retirement if:

(a) the original joint annuitant has died. The benefit must revert to the normal form retirement allowance effective the first of the month following the death of the original joint annuitant.

(b) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must revert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) A retired member filing an application to make a selection under subsection (4) or (5) shall file the application and all required supporting documentation to be received by the retirement system no later than the date that is 18 months after the date of the death of or divorce from the joint annuitant.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8); amd. Sec. 1, Ch. 493, L. 1985; amd. Sec. 1, Ch. 9, L. 1993; Sec. 19-4-702, MCA 1991; redes. 19-20-702 by Code Commissioner, 1993; amd. Sec. 15, Ch. 442, L. 1997; amd. Sec. 15, Ch. 111, L. 1999; amd. Sec. 9, Ch. 282, L. 2009; amd. Sec. 8, Ch. 59, L. 2011; amd. Sec. 22, Ch. 210, L. 2015; amd. Sec. 7, Ch. 276, L. 2019.

Cross-References

PERS — optional forms of benefits, 19-3-1501.
Judges' retirement — optional forms of benefits, 19-5-701.
Sheriffs' retirement — optional forms of benefits, 19-7-1001.
Game wardens' and peace officers' retirement — optional forms of benefits, 19-8-801.

19-20-703. Payments to be monthly — required minimum distributions. (1) All retirement allowances must be paid in equal monthly installments.

(2) Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) (a) Distribution of an inactive member's benefit must begin, or a refund of the member's accumulated contributions must be made, by the required minimum distribution beginning date.

(b) The required minimum distribution beginning date is the later of:

(i) April 1 following the calendar year in which the member terminates employment in all teachers' retirement system reportable positions; or

(ii) April 1 following the calendar year in which the member attains the age of:

(A) 70½ if the member was born before July 1, 1949;

(B) 72 if the member was born between July 1, 1949, and December 31, 1950;

(C) 73 if the member was born between January 1, 1951, and December 31, 1959; or

(D) 75 if the member was born on or after January 1, 1960.

(c) If the member fails to apply to receive retirement benefits by the required minimum distribution beginning date, the retirement system shall begin distribution of the monthly benefit under the monthly benefit option described in 19-20-702(3)(a)(i) without consideration of the member's age.

(4) The life expectancy of a member or the member's joint annuitant may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-703, MCA 1991; redes. 19-20-703 by Code Commissioner, 1993; amd. Sec. 16, Ch. 442, L. 1997; amd. Sec. 16, Ch. 111, L. 1999; amd. Sec. 10, Ch. 282, L. 2009; amd. Sec. 4, Ch. 298, L. 2009; amd. Sec. 9, Ch. 59, L. 2011; amd. Sec. 4, Ch. 173, L. 2021; amd. Sec. 6, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

The Public Employees' Retirement Act — frequency of benefit payments, 19-2-902.

19-20-704. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-704, MCA 1991; redes. 19-20-704 by Code Commissioner, 1993.

19-20-705. Repealed. Sec. 30, Ch. 210, L. 2015.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2); Sec. 19-4-705, MCA 1991; redes. 19-20-705 by Code Commissioner, 1993; amd. Sec. 19, Ch. 45, L. 2001; amd. Sec. 7, Ch. 174, L. 2003; amd. Sec. 13, Ch. 90, L. 2007; amd. Sec. 10, Ch. 59, L. 2011.

19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any county or municipal tax except for a refund paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215; amd. Sec. 8, Ch. 464, L. 1985; amd. Sec. 25, Ch. 83, L. 1989; amd. Sec. 7, Ch. 823, L. 1991; amd. Sec. 3, Ch. 259, L. 1993; Sec. 19-4-706, MCA 1991; redes. 19-20-706 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1995; amd. Sec. 17, Ch. 442, L. 1997; amd. Sec. 19, Ch. 552, L. 1997; amd. Sec. 6, Ch. 382, L. 2009; amd. Sec. 8, Ch. 276, L. 2019; amd. Sec. 46, Ch. 503, L. 2021.

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.
The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.
University System retirement program — exemption from taxation, legal process, and assessments, 19-21-212.
Execution of judgment, Title 25, ch. 13.
Garnishment — earnings of judgment debtor, 25-13-614.
Prejudgment attachment, Title 27, ch. 18.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-20-707. Repealed. Sec. 26, Ch. 111, L. 1999.

History: (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c); amd. Sec. 9, Ch. 464, L. 1985; Sec. 19-4-707, MCA 1991; redes. 19-20-707 by Code Commissioner, 1993.

19-20-708. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 658, L. 1985; Sec. 19-4-708, MCA 1991; redes. 19-20-708 by Code Commissioner, 1993.

19-20-709. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 2, Ch. 658, L. 1985; Sec. 19-4-709, MCA 1991; redes. 19-20-709 by Code Commissioner, 1993.

19-20-710. Maximum benefit limitation. A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code as adjusted for cost-of-living increases for calendar years 1988 and succeeding years. However, benefits in excess of those limits may be paid from a qualified governmental excess benefit arrangement subject to 19-20-212.

History: En. Sec. 1, Ch. 14, L. 1987; Sec. 19-4-710, MCA 1991; redes. 19-20-710 by Code Commissioner, 1993; amd. Sec. 17, Ch. 111, L. 1999; amd. Sec. 8, Ch. 174, L. 2003.

19-20-711. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 1, Ch. 115, L. 1989; Sec. 19-4-711, MCA 1991; redes. 19-20-711 by Code Commissioner, 1993; amd. Sec. 18, Ch. 442, L. 1997.

19-20-712. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 2, Ch. 115, L. 1989; Sec. 19-4-712, MCA 1991; redes. 19-20-712 by Code Commissioner, 1993; amd. Sec. 19, Ch. 442, L. 1997.

19-20-713. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 3, Ch. 115, L. 1989; Sec. 19-4-713, MCA 1991; redes. 19-20-713 by Code Commissioner, 1993; amd. Sec. 20, Ch. 442, L. 1997.

19-20-714. Repealed. Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 1, Ch. 530, L. 1993.

19-20-715. Earned compensation — limitations. Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For the purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

History: En. Sec. 8, Ch. 111, L. 1995; amd. Sec. 21, Ch. 442, L. 1997; amd. Sec. 9, Ch. 174, L. 2003; amd. Sec. 11, Ch. 59, L. 2011; amd. Sec. 9, Ch. 151, L. 2011; amd. Sec. 23, Ch. 210, L. 2015; amd. Sec. 6, Ch. 245, L. 2023.

19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the consecutive years' salary used in the calculation of the member's average final compensation under 19-20-805. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, 19-20-605(1), 19-20-608, and 19-20-609. For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) If a member signs a binding, irrevocable written election for either an option 1 or option 2 benefit at least 90 days prior to the member's termination date, the employee contributions

required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the member's date of termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code.

History: **En. Sec. 2, Ch. 442, L. 1997; amd. Sec. 18, Ch. 111, L. 1999; amd. Sec. 20, Ch. 45, L. 2001; amd. Sec. 10, Ch. 320, L. 2005; amd. Sec. 14, Ch. 90, L. 2007; amd. Sec. 8, Ch. 305, L. 2007; amd. Sec. 4, Ch. 366, L. 2013; amd. Sec. 10, Ch. 389, L. 2013; amd. Sec. 24, Ch. 210, L. 2015.**

19-20-717. Repealed. Sec. 22, Ch. 276, L. 2019.

History: **En. Sec. 4, Ch. 442, L. 1997; amd. Sec. 15, Ch. 90, L. 2007; amd. Sec. 12, Ch. 59, L. 2011.**

19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or

any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in an equivalent manner.

History: **En. Sec. 19, Ch. 111, L. 1999; amd. Sec. 10, Ch. 174, L. 2003; amd. Sec. 11, Ch. 320, L. 2005; amd. Sec. 11, Ch. 282, L. 2009; amd. Sec. 25, Ch. 210, L. 2015.**

19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) On January 1 of each year, the retirement allowance payable to each tier one member or benefit recipient of a tier one member who is eligible under subsection (3) must be increased by 1.5%.

(2) On January 1 of each year, the retirement allowance payable to each tier two member or benefit recipient of a tier two member who is eligible under subsection (3) must be increased by the amount provided in either subsection (2)(a) or (2)(b) as follows:

(a) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, 0.5%; or

(b) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the retirement board.

(3) A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in this section if at least 36 monthly retirement benefit payments have been made prior to January 1 of the year in which the adjustment is to be made.

History: **En. Sec. 1, Ch. 360, L. 1999; amd. Sec. 20, Ch. 149, L. 2001; amd. Sec. 11, Ch. 174, L. 2003; amd. Sec. 9, Ch. 285, L. 2007; amd. Sec. 9, Ch. 305, L. 2007; amd. Sec. 11, Ch. 389, L. 2013; amd. Sec. 7, Ch. 245, L. 2023.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

19-20-720. Repealed. Sec. 21, Ch. 59, L. 2011.

History: **En. Sec. 5, Ch. 360, L. 1999; amd. Sec. 19, Ch. 149, L. 2001; Sec. 19-20-622, MCA 1999; redes. 19-20-720 by Sec. 83, Ch. 7, L. 2001.**

19-20-721. Repealed. Sec. 22, Ch. 276, L. 2019.

History: **En. Sec. 21, Ch. 45, L. 2001; amd. Sec. 13, Ch. 59, L. 2011.**

19-20-722. Eligible rollover distributions. As required by section 401(a)(31) of the Internal Revenue Code, the retirement system shall advise an eligible recipient of any payment from the retirement system that constitutes an eligible rollover distribution of the recipient's rights to roll over the distribution and shall allow the recipient to elect a direct rollover of the eligible distribution to an eligible plan. The recipient is responsible for correctly designating a receiving plan that is eligible and willing to receive a direct rollover distribution of tax-deferred or after-tax contributions or both from the retirement system and to ensure timely submission of required supporting documentation from the receiving plan. The retirement system will determine, in its sole discretion, whether to make a direct rollover distribution to a receiving plan through an electronic transfer or by paper warrant.

History: En. Sec. 9, Ch. 276, L. 2019.

19-20-723 through 19-20-730 reserved.

19-20-731. *(Temporary)* **Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.** (1) (a) Except as provided in 19-20-732 or as otherwise provided in this section, a retired member may be employed in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) 49% of the sum of the member's average final compensation; or

(ii) 49% of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in 19-20-734 before the retired member may be employed in a position reportable to the retirement system.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in 19-20-732, the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the university system retirement program. *(Terminates June 30, 2027—sec. 6, Ch. 135, L. 2023.)*

19-20-731. *(Effective July 1, 2027)* **Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.** (1) (a) Except as provided in 19-20-732 or as otherwise provided in this section, a retired member may be employed in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in 19-20-734 before the retired member may be employed in a position reportable to the retirement system.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in 19-20-732, the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the university system retirement program.

History: En. Sec. 14, Ch. 320, L. 2005; amd. Sec. 16, Ch. 90, L. 2007; amd. Sec. 10, Ch. 305, L. 2007; amd. Sec. 9, Ch. 298, L. 2009; amd. Sec. 14, Ch. 59, L. 2011; amd. Sec. 10, Ch. 151, L. 2011; amd. Sec. 1, Ch. 238, L. 2013; amd. Sec. 11, Ch. 282, L. 2013; amd. Sec. 1, Ch. 135, L. 2023.

19-20-732. *(Temporary)* **Reemployment of certain retired teachers, specialists, and administrators — procedure — definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 5 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 27 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator. The office of public instruction shall verify that the employer has advertised the position as required under this subsection (1)(a)(iii).

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee, as provided in 5-11-210, regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701 that employs a retired member and is a second-class or third-class elementary district under 20-6-201 or a second-class or third-class high school district under 20-6-301.

(b) "Year" means all or any part of a school year. *(Terminates June 30, 2029—sec. 2, Ch. 132, L. 2025, sec. 3, Ch. 132, L. 2025, sec. 5, Ch. 132, L. 2025.)*

19-20-732. *(Effective July 1, 2029)* **Reemployment of certain retired teachers, specialists, and administrators — procedure — definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee in accordance with 5-11-210 regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year.

History: **En. Sec. 1, Ch. 129, L. 2009; amd. Sec. 12, Ch. 389, L. 2013; amd. Sec. 1, Ch. 307, L. 2019; amd. Sec. 46, Ch. 261, L. 2021; amd. Sec. 2, Ch. 135, L. 2023; amd. Sec. 1, Ch. 132, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 132, L. 2025. Amendment effective July 1, 2025, and terminates June 30, 2029.

Extension of Termination Date: Section 2, Ch. 132, L. 2025, and sec. 3, Ch. 132, L. 2025, amended sec. 4, Ch. 307, L. 2019, and sec. 4, Ch. 135, L. 2023, by extending the termination dates imposed by those sections to June 30, 2029. Effective July 1, 2025.

19-20-733. Resumption of employment by retired member — suspension of benefits. Except as provided in 19-20-732, and subject to 19-20-734, the following provisions apply:

(1) If a retired member returns to employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (3)(c), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement benefit option and with the same joint annuitant originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and subsection (3).

(c) If the joint annuitant nominated prior to the member's reemployment under retirement option A, B, or C dies prior to the member reretiring, the member will be given the option to select either the normal form retirement benefit or a retirement option as provided in 19-20-702.

History: **En. Secs. 1, 7, Ch. 298, L. 2009; amd. Sec. 15, Ch. 59, L. 2011; amd. Sec. 12, Ch. 366, L. 2013.**

19-20-734. *(Temporary)* **Break-in-service requirements.** (1) Except as provided in 19-20-732 and subsection (2) of this section, a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733:

(a) based on a date of termination of January 1, 2014, through December 31, 2023, may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination; or

(b) based on a date of termination of January 1, 2024, or later, may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 120 calendar days commencing on the first day following the member's date of termination.

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent or is employed to mentor a newly hired teacher;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of this section:

(a) the retired member must be returned to active member status with the retirement system retroactive to the member's date of retirement or the date of resumption of retirement benefits, whichever is later, and the member's retirement benefits must be terminated;

(b) the member shall repay all retirement benefits received in violation of this section, plus interest at the actuarially assumed rate; and

(c) the member and the employer shall pay to the retirement system contributions on all earned compensation paid to the member for service performed during the break-in-service period, plus interest at the actuarially assumed rate.

(4) For purposes of this section, the term "employed in a position reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor. *(Terminates June 30, 2029—sec. 2, Ch. 449, L. 2025.)*

19-20-734. *(Effective July 1, 2029)* **Break-in-service requirements.** (1) Except as provided in 19-20-732 and subsection (2) of this section, a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733 based on a date of termination of January 1, 2014, or later may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination.

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of this section:

(a) the retired member must be returned to active member status with the retirement system retroactive to the member's date of retirement or the date of resumption of retirement benefits, whichever is later, and the member's retirement benefits must be terminated;

(b) the member shall repay all retirement benefits received in violation of this section, plus interest at the actuarially assumed rate; and

(c) the member and the employer shall pay to the retirement system contributions on all earned compensation paid to the member for service performed during the break-in-service period, plus interest at the actuarially assumed rate.

(4) For purposes of this section, the term "employed in a position reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

History: En. Sec. 2, Ch. 238, L. 2013; amd. Sec. 3, Ch. 135, L. 2023; amd. Sec. 1, Ch. 449, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 449, L. 2025. Amendment effective July 1, 2025, and terminates June 30, 2029.

19-20-735. *(Temporary)* **Reemployment of certain retirees by superintendent of public instruction — procedure — definitions.** (1) Subject to the provisions of this section:

(a) a retired member of the teachers' retirement system who has been receiving a retirement allowance for no less than 2 months, except for a disability retirement allowance pursuant to Title 19, chapter 20, part 6, may be employed in a position reportable to the teachers' retirement system on a full-time basis by the superintendent of public instruction for a maximum of 5 years during the lifetime of the retired member without the loss or interruption of any payments or benefits if:

(i) the retired member completed 27 or more years of creditable service prior to retirement; and

(ii) each year, prior to employing a retired member, the superintendent of public instruction certifies to the teachers' retirement system board that after having advertised the position, the employer has been unable to fill the position because the employer has either received no qualified applicants or has not received an acceptance of an offer of employment made to a nonretired member of the teachers' retirement system;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) on receipt of the employer's certification and the proposed contract of employment, the teachers' retirement system board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the board shall report biennially to the education interim committee and the state administration and veterans' affairs interim committee in accordance with 5-11-210 regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the teachers' retirement system an amount equal to the sum of the contribution rates provided in 19-20-602, 19-20-604, 19-20-605, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) The board may adopt rules to implement this section.

(5) As used in this section, the following definitions apply:

(a) "Employer" means the superintendent of public instruction as described in 20-3-101 that employs a retired member of the teachers' retirement system.

(b) "System" means the teachers' retirement system.

(c) "Year" means all or any part of a fiscal year running July 1 through June 30. *(Terminates June 30, 2031—sec. 4, Ch. 443, L. 2025.)*

History: En. Sec. 1, Ch. 443, L. 2025.

Compiler's Comments

Effective Date: Section 3, Ch. 443, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 5, 2025.

Termination: Section 4, Ch. 443, L. 2025, provided: "[This act] terminates June 30, 2031."

Part 8
Superannuation Retirement

Part Cross-References

PERS — service retirement, Title 19, ch. 3, part 9.
Judges' retirement — service retirement, Title 19, ch. 5, part 5.
Highway patrol retirement — service retirement, Title 19, ch. 6, part 5.
Sheriffs' retirement — service retirement, Title 19, ch. 7, part 5.
Game wardens' and peace officers' retirement — service retirement, Title 19, ch. 8, part 6.
Police retirement — statewide plan — service retirement, Title 19, ch. 9, part 8.
Firefighters' unified retirement — service retirement, Title 19, ch. 13, part 7.

19-20-801. Eligibility for service retirement. (1) A tier one member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 25 or more years.

(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.

(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).

(4) To receive a retirement allowance under 19-20-804, the member must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(5) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to a refund of the member's accumulated contributions under 19-20-603.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983; Sec. 19-4-801, MCA 1991; redes. 19-20-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 442, L. 1997; amd. Sec. 20, Ch. 111, L. 1999; amd. Sec. 13, Ch. 366, L. 2013; amd. Sec. 10, Ch. 276, L. 2019.

19-20-802. Early retirement. (1) (a) A vested tier one member who is not eligible for service retirement but has attained the age of 50 is eligible for an early retirement allowance.

(b) A vested tier two member who is not eligible for service retirement but has attained the age of 55 is eligible for an early retirement allowance.

(2) A member retiring early under subsection (1) must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using actuarially equivalent factors based on the most recent actuarial valuation of the system.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983; Sec. 19-4-802, MCA 1991; redes. 19-20-802 by Code Commissioner, 1993; amd. Sec. 21, Ch. 111, L. 1999; amd. Sec. 12, Ch. 320, L. 2005; amd. Sec. 11, Ch. 151, L. 2011; amd. Sec. 14, Ch. 389, L. 2013; amd. Sec. 26, Ch. 210, L. 2015.

Cross-References

PERS — eligibility for early retirement, 19-3-902.
Judges' retirement — involuntary retirement benefit, 19-5-503.
Highway patrol retirement — involuntary retirement benefit, 19-6-503.
Sheriffs' retirement — early retirement option, 19-7-502.

19-20-803 reserved.

19-20-804. Allowance for service retirement — professional retirement option allowance — creditable service limitation. (1) Upon termination, a tier one or tier two member who qualifies for benefits pursuant to 19-20-801(1) or (2) must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service.

(2) (a) Upon termination, a tier two member who qualifies for benefits pursuant to 19-20-801(3) must receive a professional retirement option allowance equal to 1.85% of the member's final average compensation, as limited by 19-20-715, multiplied by the sum of the member's years of creditable service.

(b) For the purpose of calculating the professional retirement option, creditable service does not include:

(i) service credited before the member became a tier two member even if the member redeposits the member's withdrawn contributions pursuant to 19-20-427; or

(ii) service credit transferred under 19-20-409.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983; amd. Sec. 8, Ch. 113, L. 1989; Sec. 19-4-804, MCA 1991; redes. 19-20-804 by Code Commissioner, 1993; amd. Sec. 23, Ch. 442, L. 1997; amd. Sec. 22, Ch. 111, L. 1999; amd. Sec. 22, Ch. 45, L. 2001; amd. Sec. 2, Ch. 120, L. 2003; amd. Sec. 4, Ch. 402, L. 2003; amd. Sec. 13, Ch. 320, L. 2005; amd. Sec. 13, Ch. 282, L. 2009; amd. Sec. 15, Ch. 389, L. 2013.

Cross-References

Postretirement employment limitations — cancellation and recalculation of benefits, 19-20-731.

19-20-805. Calculation of average final compensation. (1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to:

(a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average; or

(b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

(2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service during the 5 years preceding termination been full-time service.

(b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the member's termination is the compensation that the member would have earned in the 5 years used to calculate average final compensation had the member's part-time service during the 7 years preceding termination been full-time service.

(3) To determine the compensation that the member would have earned under subsection (2), the compensation reported must be divided by the part-time service credited to the member's account.

(4) (a) Subject to subsection (4)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service if a tier one member or 5 consecutive years of full-time service if a tier two member reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

(5) (a) The earned compensation reported in each year that is used to calculate the average final compensation may not be greater than 110% of the earned compensation for the next prior year of service reported to the teachers' retirement system. This limitation does not apply to an increase that results from movement on the employer's adopted salary matrix but does apply to an increase that results from additions to or adjustments of the employer's salary matrix or initial implementation of a salary matrix.

(b) Earned compensation in excess of the amount specified in subsection (5)(a) must be included in the calculation of average final compensation in the same manner as termination pay option 2 as provided in 19-20-716(1)(b).

History: **En. Sec. 1, Ch. 442, L. 1997; amd. Sec. 12, Ch. 174, L. 2003; amd. Sec. 17, Ch. 90, L. 2007; amd. Sec. 16, Ch. 59, L. 2011; amd. Sec. 8, Ch. 366, L. 2013; amd. Sec. 16, Ch. 389, L. 2013; amd. Sec. 5, Ch. 39, L. 2017; amd. Sec. 8, Ch. 245, L. 2023.**

19-20-806. Terminated. Sec. 6, Ch. 120, L. 2003.

History: **En. Sec. 1, Ch. 120, L. 2003; amd. Sec. 15, Ch. 320, L. 2005.**

19-20-807 through 19-20-809 reserved.

19-20-810. Termination of employment — retired member status — certification of termination date. (1) A member shall terminate employment in all positions reportable to the retirement system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802, disability retirement under 19-20-901, or withdrawal under 19-20-603.

(2) Except as provided in subsections (3) and (4), a member has terminated employment in a position reportable to the retirement system when the employment relationship with the employer has been fully and completely severed and all, if any, payments due upon termination of employment, including but not limited to payment of accrued sick and annual leave balances, have been paid to the member.

(3) (a) A member who has not attained normal retirement age has not terminated employment in a position reportable to the retirement system if the member and the employer have a prearranged agreement for postretirement service.

(b) For purposes of this subsection (3), a "prearranged agreement for postretirement service" means an oral or written agreement between a member and an employer made before the member attains retired member status for the member to provide service or perform work, in any capacity, on behalf of the employer in the future.

(4) A member has not terminated employment in a position reportable to the retirement system if the member provides any service or performs any work, in any capacity, on behalf of the employer after the certified date of termination but prior to attaining retired member status.

(5) A member must be in retired member status before the member is eligible to be employed as a working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement system before the member attains retired member status is service provided as an active member, and the member shall terminate from the position to be eligible for retirement benefits.

(6) (a) A member attains retired member status when the member has terminated employment in all positions reportable to the retirement system and has actually received at least one monthly retirement benefit payment.

(b) A retired member who returns to active member status for any reason ceases to be in retired member status until the member again applies for a retirement benefit and actually receives at least one monthly retirement benefit payment.

(7) (a) Unless waived by the board, the member and the employer for each position from which the member is terminating or has terminated shall certify on a form provided by the retirement system the member's date of termination and whether there is a prearranged agreement for postretirement service.

(b) The certification obligation of the member and the employer is ongoing and must be immediately updated if the information previously provided was in error or has changed.

History: En. Sec. 9, Ch. 366, L. 2013; amd. Sec. 11, Ch. 276, L. 2019.

Part 9
Disability Retirement

Part Cross-References

PERS — disability retirement, Title 19, ch. 3, part 10.
Judges' retirement — disability retirement benefits, Title 19, ch. 5, part 6.
Highway patrol retirement — disability retirement benefits, Title 19, ch. 6, part 6.
Sheriffs' retirement — disability retirement benefits, Title 19, ch. 7, part 6.
Game wardens' and peace officers' retirement — disability retirement benefits, Title 19, ch. 8, part 7.
Police retirement — statewide plan — disability retirement benefits, Title 19, ch. 9, part 9.
Firefighters' unified retirement — disability retirement benefits, Title 19, ch. 13, part 8.

19-20-901. Eligibility for disability retirement — determination by board. (1) Except as provided in subsection (5), upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated.

(2) In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(3) In making a determination under subsection (2), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, vocational rehabilitation counselor, or any other health care provider or other professional determined by the retirement board to be qualified, competent, and necessary to assist the board in making the disability determination;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (3)(c) are enforceable as provided in 2-4-104.

(4) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

(5) (a) A tier two member is not eligible for disability retirement if the member is or will be eligible for service retirement on or before the member's date of termination.

(b) A disability retirement application filed by a member who is ineligible for disability retirement under subsection (5)(a) will be processed as an application for a service retirement allowance.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a); amd. Sec. 3, Ch. 8, L. 1991; amd. Sec. 2, Ch. 226, L. 1993; Sec. 19-4-901, MCA 1991; redes. 19-20-901 by Code Commissioner, 1993; amd. Sec. 23, Ch. 111, L. 1999; amd. Sec. 17, Ch. 389, L. 2013; amd. Sec. 9, Ch. 245, L. 2023.

19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409; or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c); amd. Sec. 61, Ch. 370, L. 1987; amd. Sec. 9, Ch. 113, L. 1989; amd. Sec. 3, Ch. 226, L. 1993; Sec. 19-4-902, MCA 1991; redes. 19-20-902 by Code Commissioner, 1993; amd. Sec. 24, Ch. 442, L. 1997; amd. Sec. 24, Ch. 111, L. 1999.

19-20-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period afterward, the retirement board may require a disability benefit recipient who has not yet attained the age of 60 to undergo a medical examination by a physician, psychologist, or any other health care provider or other professional determined by the retirement board to be qualified, competent, and necessary to assist the board in making the disability determination. The examination must be made at the place of residence of the benefit recipient or other place mutually agreed on. Based on the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.

(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.

(3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a medical examination as required in subsection (1), the recipient's allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b); amd. Sec. 2, Ch. 24, L. 1987; Sec. 19-4-903, MCA 1991; redes. 19-20-903 by Code Commissioner, 1993; amd. Sec. 25, Ch. 442, L. 1997; amd. Sec. 10, Ch. 245, L. 2023.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

19-20-904. Adjustment of allowance. (1) (a) Except as provided by subsection (1)(b), if a retiree receiving a disability retirement allowance is engaged in or is able to engage in a gainful occupation paying more than the difference between the retiree's retirement allowance and the retiree's average final compensation or the difference between the median average final compensation of those members retired during the preceding fiscal year and the retiree's retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the retiree, is equal to the retiree's average final compensation or the median average final compensation of those members retired during the preceding fiscal year, whichever is greater.

(b) If a disabled retiree is reemployed with the same employer within 30 days from the member's effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.

(2) If the disabled retiree's earning capacity is changed later, the retirement allowance may be further modified, but the new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the retiree, equals the retiree's average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983; amd. Sec. 3, Ch. 24, L. 1987; Sec. 19-4-904, MCA 1991; redes. 19-20-904 by Code Commissioner, 1993; amd. Sec. 7, Ch. 111, L. 1995; amd. Sec. 26, Ch. 442, L. 1997; amd. Sec. 27, Ch. 210, L. 2015.

Cross-References

PERS — disability benefit reduced by earnings, 19-3-1103.

19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed in a position reportable to the retirement system and earns compensation in any calendar year in excess of the limitation provided in 19-20-904, the retiree's retirement allowance must cease and the retiree must again become an active member of the retirement system effective on the first day of the month following the month in which the earnings limitation was exceeded. At this point, the member is deemed to be no longer disabled.

(2) (a) Upon subsequent termination of employment in all teachers' retirement system reportable positions, a member who is then eligible based on age or service for either an early retirement allowance under 19-20-802 or a regular retirement allowance under 19-20-804 may immediately apply for a retirement allowance. Eligibility for retirement based on service is determined based on the creditable service credited to the member at the time of disability retirement excluding any creditable service enhancement applied pursuant to 19-20-902(1)(b). The retirement allowance payable upon subsequent retirement is the lesser of:

(i) the early or regular service retirement allowance the member is eligible to receive based on the creditable service and earned compensation credited to the member at the time of the member's disability retirement excluding any creditable service or earned compensation enhancement applied as provided in 19-20-902(1)(b), plus the additional creditable service and earned compensation credited to the member after the return to active member status; or

(ii) an amount equal to the disability retirement benefit received prior to the return to active member status plus a second benefit amount calculated based on the creditable service accrued and average earned compensation credited for all years of service during the return to active member status.

(b) Upon subsequent termination of employment in all teachers' retirement system reportable positions, a member who is not then eligible for an early or regular service retirement allowance under subsection (2)(a) shall wait to apply for a subsequent retirement allowance until eligible under subsection (2)(a) or may make a new application for a disability retirement allowance.

(c) A member who originally retired on a disability allowance and later returned to active member status may not make, and the member's subsequent retirement allowance may not be enhanced by, any permissive service purchase not used in the calculation of the member's original disability retirement allowance.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d); Sec. 19-4-905, MCA 1991; redes. 19-20-905 by Code Commissioner, 1993; amd. Sec. 27, Ch. 442, L. 1997; amd. Sec. 13, Ch. 174, L. 2003; amd. Sec. 14, Ch. 282, L. 2009; amd. Sec. 6, Ch. 39, L. 2017; amd. Sec. 5, Ch. 173, L. 2021; amd. Sec. 7, Ch. 136, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 136, L. 2025. Amendment effective July 1, 2025.

Cross-References

PERS — medical examination of disability retiree — cancellation and reinstatement, 19-3-1015.

Part 10
Death Benefits

Part Cross-References

PERS — survivorship benefits and death payments, Title 19, ch. 3, part 12.

Judges' retirement — survivorship benefits and death payments, Title 19, ch. 5, part 8.

Highway patrol retirement — survivorship benefits and death payments, Title 19, ch. 6, part 9.

Sheriffs' retirement — survivorship benefits and death payments, Title 19, ch. 7, part 9.

Game wardens' and peace officers' retirement — survivorship benefits and death payments, Title 19, ch. 8, part 10.

Police retirement — statewide plan — survivorship benefits and death payments, Title 19, ch. 9, part 11.

Firefighters' unified retirement — survivorship benefits and death payments, Title 19, ch. 13, part 9.

19-20-1001. Payments upon death of member prior to retirement. (1) If a member dies before retirement:

(a) except as provided in subsection (2), a lump-sum refund of the member's account balance must be paid to the member's eligible beneficiary or beneficiaries;

(b) if the deceased member was vested and was an active member in the retirement system within 1 year before the member's death, the eligible beneficiaries receiving a refund under subsection (1)(a) or a retirement allowance under subsection (2) are entitled to receive in equal shares a $500 lump-sum death benefit; and

(c) subject to 19-20-1009, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(2) (a) In lieu of the refund provided for in subsection (1)(a), if the deceased member was vested, an eligible designated beneficiary who is an individual may elect to receive the beneficiary's interest as a retirement allowance for the beneficiary's lifetime. The retirement allowance must be determined as prescribed in 19-20-804, without reference to 19-20-805(5)(a), in the same manner as if the member elected the option A joint and survivor annuity optional allowance provided for in 19-20-702(2).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) (i) If more than one eligible beneficiary elects to receive a retirement allowance, each is entitled to an equal share of the benefit.

(ii) In the event that all eligible beneficiaries who elected a retirement allowance die, the member's account balance, if any, will be paid out to the alternate beneficiary of the last surviving eligible beneficiary who elected a retirement allowance under subsection (2)(a).

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981; amd. Sec. 4, Ch. 56, L. 1989; Sec. 19-4-1001, MCA 1991; redes. 19-20-1001 by Code Commissioner, 1993; amd. Sec. 28, Ch. 442, L. 1997; amd. Sec. 23, Ch. 45, L. 2001; amd. Sec. 16, Ch. 320, L. 2005; amd. Sec. 15, Ch. 282, L. 2009; amd. Sec. 17, Ch. 59, L. 2011; amd. Sec. 18, Ch. 389, L. 2013; amd. Sec. 28, Ch. 210, L. 2015; amd. Sec. 12, Ch. 276, L. 2019; amd. Sec. 11, Ch. 245, L. 2023.

19-20-1002. Payments on death of retiree. (1) In the event of the death of a retired member:

(a) a lump-sum death benefit of $500 is payable to the joint annuitant or in equal shares to the deceased retiree's eligible beneficiary or beneficiaries receiving benefits under either subsection (2), (3), or (4) and is in addition to those benefits or, if there is no continuing benefit payable, to the deceased retiree's designated or alternate beneficiary; and

(b) subject to 19-20-1009, the sum of $200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

(2) If the member was receiving a normal form retirement allowance, a lump-sum refund of the member's account balance, if any, must be paid to the eligible beneficiary or beneficiaries in equal shares.

(3) If the member was receiving a joint and survivor annuity optional retirement allowance:

(a) monthly benefits must continue to be paid to the joint annuitant; or

(b) if there is no surviving joint annuitant, a lump-sum refund of the member's account balance, if any, must be paid to the member's alternate beneficiary or beneficiaries in equal shares.

(4) If the retired member was receiving a 10-year or 20-year period certain retirement allowance, until the period has expired:

(a) if the eligible beneficiary is one or more individuals, the monthly benefits must continue to be paid to the eligible beneficiary or beneficiaries in equal shares. If there is more than one eligible beneficiary, upon the death of one eligible beneficiary, the benefit amount payable to the deceased beneficiary must be redistributed in equal shares to the surviving eligible beneficiaries. If all eligible beneficiaries die before the period has expired, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the alternate beneficiary of the last surviving eligible beneficiary.

(b) if the eligible beneficiary is the deceased retiree's estate or trust, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the eligible beneficiary.

(5) (a) Not including any minor child benefit of $200 a month payable under subsection (1)(b), if the only amount remaining payable on the account of a deceased retiree is the $500 death benefit and there are multiple individuals who are eligible designated or alternate beneficiaries to share in the $500 death benefit, any of the potential beneficiaries must be considered to have fully and irrevocably renounced their rights and interest to a share of the $500 death benefit when the following criteria are met:

(i) the retirement system is unable to identify or locate the individual;

(ii) if identified and located, the retirement system mailed notice of the beneficiary interest and required application materials to be completed and returned by the individual on two occasions at least 30 days apart and the individual failed to complete and return the required application materials to be received by the retirement system within 30 days of the second mailing by the retirement system;

(iii) at least one eligible beneficiary has completed and returned the required application materials to the retirement system;

(iv) at least 180 days has passed following the death of the retiree and, if required application materials were sent to the individual as described in subsection (5)(a)(ii), at least 30 days has passed since the date of the second mailing by the retirement system; and

(v) the retirement system has not received actual notice of formal or informal probate of the deceased retiree's estate.

(b) Any portion of the $500 death benefit may not be distributed until the total benefit can be distributed. The share of the $500 death benefit that would have been payable to a potential beneficiary considered to have renounced their interest under this provision must be distributed in equal shares to an eligible beneficiary who has been identified and located and who has completed and returned the required application materials. Distribution of the $500 death benefit to an eligible beneficiary is satisfaction in full of the retirement system's obligation for distribution of the $500 death benefit.

(c) This subsection (5) does not require the retirement system to distribute the $500 death benefit strictly within the timeframe specified or prohibit the retirement system from providing any additional process the retirement system believes to be reasonable and appropriate to identify, locate, and obtain required application materials from an eligible beneficiary.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208 (part); amd. Sec. 5, Ch. 56, L. 1989; Sec. 19-4-1002, MCA 1991; redes. 19-20-1002 by Code Commissioner, 1993; amd. Sec. 29, Ch. 442, L. 1997; amd. Sec. 18, Ch. 59, L. 2011; amd. Sec. 7, Ch. 39, L. 2017; amd. Sec. 13, Ch. 276, L. 2019; amd. Sec. 12, Ch. 245, L. 2023.

Cross-References

PERS — death payments to designated beneficiaries of retired members, 19-3-1210.
Judges' retirement — payments upon death from other causes, 19-5-802.
Highway patrol retirement — payments upon death from other causes, 19-6-902.
Sheriffs' retirement — payments upon death before retirement, 19-7-901.
Game wardens' and peace officers' retirement — nonduty-related death of member, 19-8-1003.
Police retirement — statewide plan — preretirement death benefits, 19-9-1101.
Firefighters' unified retirement — survivorship benefit, 19-13-902.

19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a retired member's beneficiary or joint annuitant may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary.

History: En. Sec. 25, Ch. 111, L. 1999; amd. Sec. 16, Ch. 282, L. 2009; amd. Sec. 19, Ch. 59, L. 2011.

19-20-1004. Compliance with federal act. With respect to a member's death occurring on or after January 1, 2007, while a member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member had resumed employment and then died and that are contingent on the member's death while employed.

History: En. Sec. 17, Ch. 282, L. 2009.

19-20-1005. Alternate beneficiaries. (1) A decedent's alternate beneficiary is the decedent's estate if the estate is probated.

(2) (a) If the decedent's estate is not informally or formally probated, the alternate beneficiaries are the surviving individuals determined in the following order of priority, the decedent's:

(i) legal spouse;
(ii) natural and adopted children, in equal shares;
(iii) parents, in equal shares;
(iv) grandchildren, in equal shares;
(v) siblings, in equal shares; or
(vi) nieces and nephews, in equal shares.

(b) Payments to an alternate beneficiary under subsection (2)(a) may be made only after the retirement system receives an affidavit from the individual on a form prescribed by the retirement system attesting that to the best of the individual's knowledge:

(i) there is no living individual who is an eligible alternate beneficiary at a higher level of priority; and

(ii) the decedent's estate will not be formally or informally probated.

(3) If the retirement system is unable to identify and locate a surviving individual listed in subsection (2)(a), the alternate beneficiary is the individual named in the decedent's will as the personal representative or executor of the decedent's estate if:

(a) the total amount to be distributed is $5,000 or less;
(b) payment will be made by December 31 in the year of the death; and
(c) the personal representative or executor files an affidavit on a form prescribed by the retirement system attesting that:

(i) no application or petition for the appointment of another executor or personal representative of the decedent's estate is pending or has been granted in any jurisdiction;

(ii) the affiant is not aware of the existence and location of any individual who would be an eligible alternate beneficiary under subsection (1); and

(iii) the affiant will accept the distribution from the retirement system in the affiant's capacity as executor or personal representative under the decedent's will and will use the funds in conformity with the will and applicable law.

(4) A distribution under subsection (3) will be reported for tax purposes as a final distribution to the decedent.

(5) Payment under this section of benefits due shall constitute full discharge of the retirement system's duties and obligations resulting from the death.

History: En. Sec. 14, Ch. 276, L. 2019.

19-20-1006. When beneficiaries designated — eligible beneficiaries — right to renounce. (1) Upon first becoming an active member of the retirement system, the member shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(2) (a) At the time of retirement, the member's beneficiary designations under subsection (1) are void and the member shall designate a joint annuitant or make a new beneficiary designation as provided in this subsection (2).

(b) A member who elects a normal form retirement allowance or a 10-year or 20-year period certain allowance under 19-20-702(3) shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(c) A member who elects a joint and survivor annuity under 19-20-702(2) shall designate one individual as the member's joint annuitant and is prohibited from designating a beneficiary.

(3) A designated beneficiary must be one of the following expressly identified by the designator in a beneficiary designation record as a primary or contingent beneficiary:

(a) a named individual;

(b) the member's estate; or

(c) a legally existing trust created by the member as trustor or grantor.

(4) (a) If the member's estate or trust is designated as a primary beneficiary, no other primary and no contingent beneficiary may be designated.

(b) If the member's estate or trust is designated as a contingent beneficiary, no other contingent beneficiaries may be designated.

(5) (a) An eligible beneficiary is a designated beneficiary or alternate beneficiary entitled to receive payment of all or a share of a refund of a member's account balance, a monthly retirement allowance, or a lump-sum payment of the actuarially determined present value of the remaining payments under a period certain retirement allowance due to the death of a member or benefit recipient, based on the criteria set forth in this section.

(b) For an individual to be an eligible beneficiary, the individual must:

(i) survive at the time the distribution is to be made; and

(ii) have a social security number.

(c) For the estate of the decedent to be an eligible beneficiary, the estate must:

(i) be in formal or informal probate at the time the distribution is to be made;

(ii) have a court-appointed personal representative; and

(iii) have a tax identification number.

(d) For a trust created by the decedent to be an eligible beneficiary, the trust at the time the distribution is to be made must:

(i) legally exist;

(ii) be irrevocable;

(iii) have a tax identification number.

(6) The eligible beneficiary or beneficiaries are determined at the time the first distribution is to be made by the retirement system as a result of the death of a decedent in the following order of priority to:

(a) one or more primary designated beneficiaries;

(b) one or more contingent designated beneficiaries; or

(c) one or more alternate beneficiaries.

(7) An individual who is a designated beneficiary may renounce the individual's beneficiary interest. A renunciation must be made of the beneficiary's entire interest. A partial renunciation

may not be made. A beneficiary who renounces the beneficiary's interest is deemed to have predeceased the designator.

History: **En. Sec. 15, Ch. 276, L. 2019.**

Cross-References

Optional allowances — joint and survivor annuity — period certain, 19-20-702.

19-20-1007. Requirements for beneficiary designation to be effective. (1) To be accepted as an effective beneficiary designation, the beneficiary designation record must:

(a) be made on a paper form or by an electronic process prescribed by the retirement system specifically for the designation of beneficiaries;

(b) if submitted electronically, include the certified digital signature of the member or, if submitted on a paper form, be signed by the member and notarized;

(c) specifically identify each eligible beneficiary intended to be designated as a beneficiary;

(d) include all required information and supporting documentation for each designated beneficiary;

(e) comply with all other stated requirements and limitations; and

(f) be submitted to the retirement system while the member is still alive.

(3) (a) The retirement system is not responsible for verifying beneficiary information provided by a designator.

(b) The retirement system may accept or decline a beneficiary designation record pending receipt of required supporting documentation. However, if the retirement system accepts a beneficiary designation record pending receipt of supporting documentation, the beneficiary designation is not effective unless the retirement system receives all required supporting documentation within the required timeframe.

(c) If multiple beneficiaries are designated on a beneficiary designation record and the retirement system accepts the beneficiary designation as effective but later determines that one or more of the beneficiaries was not effectively designated or is not an eligible beneficiary at the time payment is to be made, the beneficiary designation will remain in effect with the ineffectively designated or ineligible beneficiaries deemed to have predeceased the member.

History: **En. Sec. 16, Ch. 276, L. 2019.**

19-20-1008. Changes to beneficiary designations — limitations on changing spouse beneficiary interest. (1) Once accepted by the retirement system, a beneficiary designation may be changed only by the member submitting to the retirement system a new effective beneficiary designation record. No other action, process, or provision of law may invalidate, revoke, terminate, or otherwise modify the beneficiary designation record. Divorce, annulment, or other circumstances resulting in the termination of a valid or invalid marriage does not void the member's designation of the former spouse or purported spouse as a beneficiary.

(2) (a) Except as provided in subsection (3), a member may change the member's beneficiary designation at any time by filing with the retirement system a new beneficiary designation record.

(b) The new beneficiary designation must meet all requirements specified in 19-20-1007 to be effective.

(c) A new effective beneficiary designation invalidates all prior beneficiary designations.

(3) (a) A member may not reduce or revoke the beneficiary interest of a designated beneficiary identified as the member's spouse if a divorce is pending, except with a signed and notarized waiver of beneficiary interest made by the spouse or pursuant to an order of the court in which the divorce is pending.

(b) If a change resulting in a reduction or revocation of a spouse beneficiary's interest is made by the member, the member shall establish the member's right to reduce or revoke the spouse beneficiary's interest by completing a certification of marital status.

History: **En. Sec. 17, Ch. 276, L. 2019.**

19-20-1009. Payment to minor child — opportunity to name custodian. (1) The retirement system may not make a payment directly to an individual who is less than 21 years of age.

(2) The retirement system shall make a payment to which a minor child is entitled by making the payment to an entity or adult designated as a custodian for the minor child pursuant to the Montana Uniform Transfers to Minors Act or to a person or entity designated by court order as legal guardian or conservator for the minor child.

(3) If a custodian for the child has not been designated, the retirement system shall withhold payment of any amount until the minor child attains 21 years of age or until a court order of guardianship or conservatorship is issued on behalf of the child.

History: **En. Sec. 18, Ch. 276, L. 2019.**

19-20-1010 through 19-20-1012 reserved.

19-20-1013. Supremacy of retirement system provisions. The designation and payment of beneficiaries under the retirement system is governed solely by the provisions of this chapter. No other provisions of law apply.

History: **En. Sec. 19, Ch. 276, L. 2019.**

Part 11
Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld must be paid directly to the sponsoring employer.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit.

(3) Each month, using the retirement system's online employer reporting system, the employer shall commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification that all authorized insurance deductions are correct.

(4) The employer shall notify the benefit recipient of any changes related to the premiums, including any changes to the premium amount, prior to the effective date of the change.

History: **En. Sec. 1, Ch. 20, L. 1987; Sec. 19-4-1101, MCA 1991; redes. 19-20-1101 by Code Commissioner, 1993; amd. Sec. 14, Ch. 174, L. 2003; amd. Sec. 18, Ch. 90, L. 2007; amd. Sec. 20, Ch. 59, L. 2011; amd. Sec. 10, Ch. 366, L. 2013; amd. Sec. 29, Ch. 210, L. 2015.**

Part 12
Unpaid Contributions and Overpayments

19-20-1201. Definitions. As used in this part, the following definitions apply:

(1) "Amount owed" means the total amount of overpaid benefits or unpaid contributions plus accrued interest as provided in 19-20-1206 and costs and fees awarded as provided in 19-20-1214.

(2) "Benefit recipient" means a benefit recipient as defined in 19-20-101, an alternate payee, or any other person or entity that is entitled to a future payment or that received an overpayment on behalf of the member.

(3) "Error" means any of the following, whether or not intended, that has resulted in or may result in the retirement system paying more or less on behalf of a member than is authorized to be paid or in the retirement system receiving more or less in contributions than is required to be paid to the retirement system pursuant to plan terms:

(a) a clerical mistake;

(b) a failure to fully and correctly perform a required act or provide required information;

(c) an assertion or other representation of fact or circumstance that is not complete and accurate; or

(d) an incorrect understanding, construction, or application of plan terms or other applicable law or policy.

(4) "Overpaid benefits" or "overpayment" means the total amount of all monthly retirement benefits or other amounts paid by the retirement system on behalf of a member due to an error.

(5) "Unpaid contributions" means the total amount of all monthly contributions or other contribution amounts not received by the retirement system due to an error.

History: **En. Sec. 1, Ch. 210, L. 2015.**

19-20-1202. Correction of errors. The retirement system shall correct errors and, as far as practicable, shall:

(1) in the case of underpaid benefits, adjust future benefit payments so the actuarial equivalent of the benefit to which the member or benefit recipient is correctly entitled will be paid;

(2) in the case of overpaid contributions, refund the excess contributions;

(3) in the case of unpaid contributions, recover the amounts owed for unpaid contributions; and

(4) in the case of overpaid benefits, recover the amounts owed for overpayment.

History: En. Sec. 2, Ch. 210, L. 2015.

19-20-1203. Recovery of unpaid employer contributions. An amount owed for unpaid employer contributions must be paid to the retirement system by the employer and is not subject to reduction for any reason.

History: En. Sec. 3, Ch. 210, L. 2015.

19-20-1204. Recovery of unpaid employee contributions. (1) An amount owed for unpaid employee contributions must be paid to the retirement system by the employer if, at the time the contributions were due, the employer was legally required to pick up and remit the contributions to the retirement system on behalf of the member pursuant to 19-20-602(3)(a) and the unpaid contributions resulted from or were furthered by the employer's error.

(2) An amount owed for unpaid employee contributions not payable by the employer under subsection (1) must be paid to the retirement system by the member or benefit recipient.

History: En. Sec. 4, Ch. 210, L. 2015.

19-20-1205. Recovery of overpayments. (1) Subject to subsection (2), an amount owed to the retirement system for overpaid benefits must be recovered as follows:

(a) from any retirement benefit or other amount payable by the retirement system to a benefit recipient; or

(b) through repayment by a benefit recipient who received an overpayment or by the estate of the benefit recipient.

(2) If an overpayment resulted from or was furthered by an employer's error, the employer is jointly and severally liable for all amounts owed to the retirement system for the overpayment.

History: En. Sec. 5, Ch. 210, L. 2015.

19-20-1206. Interest on overpayments and unpaid contributions. (1) Except as provided in subsection (2), overpaid benefits and unpaid contributions accrue interest at the retirement system's actuarially assumed annual rate of return, compounded monthly. Interest accrues beginning on the date that the first erroneous payment was made or that the contributions were first due and continues to accrue until the amount owed to the retirement system is fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the amount owed may not include interest.

History: En. Sec. 6, Ch. 210, L. 2015.

19-20-1207 through 19-20-1210 reserved.

19-20-1211. Notices required — initial notice — final staff determination. (1) (a) Before taking action to correct an error or recover overpaid benefits or unpaid contributions, the retirement system shall provide a written initial notice to any person or entity from whom the overpayment or unpaid contributions may be recovered.

(b) The initial notice must:

(i) specify the grounds for the retirement system's initial determination that an error has occurred;

(ii) specify, to the extent practicable, the amount owed for overpaid benefits or unpaid contributions;

(iii) identify additional documentation or information, if any, required to be provided to the retirement system for a final staff determination; and

(iv) provide an opportunity for the noticed party or parties to submit additional documentation or information they believe is relevant to the retirement system's determination.

(2) (a) Unless additional time is required for good cause, the retirement system shall issue a final staff determination within 180 days after the date the initial notice was issued.

(b) The final staff determination must specify the process required for a party to appeal the final staff determination to the retirement board.

(3) Notice provided pursuant to this section may be provided to multiple persons or entities as a standardized notice directed to multiple recipients.

History: En. Sec. 7, Ch. 210, L. 2015.

19-20-1212. Recovery methods. (1) The retirement system may use any or all of the following methods to recover amounts owed from a member or benefit recipient:

(a) accept a lump-sum payment;
(b) accept installment payments;
(c) accept a rollover payment from a member;
(d) actuarially adjust monthly benefit payments;
(e) withhold up to 50% of each monthly benefit payment;
(f) withhold up to 100% of a lump-sum distribution; or
(g) withhold up to 100% of the lump-sum death benefit payable under 19-20-1001(1)(b) or 19-20-1002(1)(a).

(2) For payment of amounts owed by an employer, the retirement system may use any or all of the following methods:

(a) adjust the amount of subsequent contributions due from the employer;
(b) accept installment payments; or
(c) accept a lump-sum payment.

History: En. Sec. 9, Ch. 210, L. 2015; amd. Sec. 20, Ch. 276, L. 2019.

19-20-1213. Retirement system's discretion — priority right to recover. (1) Nothing in this part is intended to prohibit retirement system staff from working informally with an employer, a member, or a benefit recipient to mutually resolve an error and recover amounts owed to the retirement system prior to the retirement system taking formal action as provided in this part.

(2) The retirement system has sole discretion to determine the most appropriate method for correcting errors and recovering amounts owed to it.

(3) The retirement system's right to recover amounts owed to it as set forth in this part does not prohibit the retirement system from pursuing any other remedy or penalty available to the retirement system.

(4) The retirement system's right to recover amounts owed to it has priority over the claim of any member, benefit recipient, or other individual or entity claiming an interest in any amount payable by the retirement system to or on behalf of the member.

History: En. Sec. 10, Ch. 210, L. 2015.

19-20-1214. Costs and fees for recovering amounts owed. (1) Unless an overpayment or unpaid contributions resulted solely from an error of the retirement system, in any contested case or other civil proceeding for correction of an error or recovery of an overpayment or unpaid contributions, the retirement system is entitled to the costs enumerated in 25-10-201 and to reasonable attorney fees if:

(a) the retirement system prevails in its claim or defense; and

(b) the court finds, upon judicial review, that the claim or defense of the other party that brought or defended the action was frivolous or was pursued in bad faith.

(2) If there are multiple parties adverse to the retirement system in a contested case, the parties are jointly and severally liable for the costs and fees awarded to the retirement system.

History: En. Sec. 11, Ch. 210, L. 2015.

19-20-1215. Statute of limitations. (1) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the retirement system may recover amounts owed for overpayments or unpaid contributions only for benefits or other amounts actually paid by the retirement system or for contributions that were actually due in the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice and ending when all amounts owed for overpayments or unpaid contributions are fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely or partially from an error made by an employer, a member, or a benefit recipient, the retirement system may recover all amounts owed for the overpayment or unpaid contributions beginning on the date that the first erroneous payment was made or that contributions were first due. The retirement system may not recover amounts owed under this subsection unless the retirement system issues an initial notice no later than 24 months after the date on which the last payment of a retirement benefit or other amount was made by the retirement system on behalf of the member.

(3) No other statute of limitations or legal or equitable defense to the application of a statute of limitations may be applied to shorten the timeframes in which or for which the retirement system may seek recovery of amounts owed for overpayments or unpaid contributions.

History: En. Sec. 8, Ch. 210, L. 2015.

CHAPTER 21
UNIVERSITY SYSTEM RETIREMENT PROGRAM

Part 1 — General Provisions

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19-21-201. Participation in program.
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19-21-211. Payment of benefits.
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19-21-213. Participation by employees in positions covered by public employees' retirement system.
19-21-214. Contributions and allocations for employees in positions covered under public employees' retirement system.

Chapter Cross-References

Duplicate warrants issued to retirees without requiring indemnity bond, 17-8-306.
Public employees' retirement system, Title 19, ch. 3.
Judges' retirement, Title 19, ch. 5.
Highway patrol retirement, Title 19, ch. 6.
Sheriffs' retirement, Title 19, ch. 7.
Game wardens' and peace officers' retirement, Title 19, ch. 8.
Police retirement — statewide plan, Title 19, ch. 9.
Firefighters' unified retirement system, Title 19, ch. 13.
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.
Firefighters' retirement, Title 19, ch. 18.
Police retirement — local funds, Title 19, ch. 19.
Teachers' retirement, Title 19, ch. 20.
Education, Title 20.
Teachers, superintendents, and principals, Title 20, ch. 4.
University System, Title 20, ch. 25.

Part 1
General Provisions

19-21-101. Authority to establish university system retirement program. The board of regents may establish a university system retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program. The program must comply with applicable sections of the Internal Revenue Code.

History: En. Sec. 1, Ch. 494, L. 1987; amd. Sec. 31, Ch. 490, L. 2001; amd. Sec. 12, Ch. 282, L. 2013.

19-21-102. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Program" means the university system retirement program established pursuant to this chapter.

(2) "Public employees' retirement system" means the retirement system established in 19-3-103.

(3) "Teachers' retirement system" or "system" means the teachers' retirement system provided for in Title 19, chapter 20.

History: En. Sec. 2, Ch. 494, L. 1987; amd. Sec. 36, Ch. 471, L. 1999; amd. Sec. 13, Ch. 282, L. 2013.

19-21-103. Duties of board of regents. The board of regents shall:

(1) act as fiduciaries of the program and exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims;

(2) provide for the administration of the program;

(3) designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:

(a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;

(b) relationship of these rights and benefits to the amount of contributions to be made;

(c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and

(d) ability of the designated company or companies to provide these rights and benefits.

History: En. Sec. 5, Ch. 494, L. 1987; amd. Sec. 32, Ch. 490, L. 2001.

Cross-References

Teachers' retirement — administration of system, Title 19, ch. 20, part 2.

19-21-104 through 19-21-110 reserved.

19-21-111. Repealed. Sec. 3, Ch. 419, L. 1997.

History: En. Sec. 9, Ch. 494, L. 1987; amd. Sec. 1, Ch. 365, L. 1991; amd. Sec. 2, Ch. 178, L. 1993.

Part 2
Participation — Benefits

19-21-201. Participation in program. (1) Except as provided in this section, academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) Except as provided in subsection (3), an eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired, subject to subsection (7); or

(ii) become a member of the program.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(3) A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to

remain in the public employees' retirement system or the teachers' retirement system pursuant to subsection (2).

(4) An election under this section must be exercised by filing a written irrevocable election with the teachers' retirement system or the public employees' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(5) If an eligible person fails to exercise an election under this section, the person shall remain or become a member of the teachers' retirement system or the public employees' retirement system.

(6) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

(7) Beginning July 1, 2017, if a person making an election under subsection (2)(b) is an active, inactive, or retired member of both the public employees' retirement system and the teachers' retirement system, the person may only elect, under subsection (2)(b)(i), to remain a member of the system to which the position is reportable under the regular participation criteria specified in 19-3-401 or 19-20-302.

History: **En. Sec. 3, Ch. 494, L. 1987; amd. Sec. 3, Ch. 178, L. 1993; amd. Sec. 37, Ch. 471, L. 1999; amd. Sec. 33, Ch. 490, L. 2001; amd. Sec. 1, Ch. 40, L. 2017.**

19-21-202. Effect on rights under teachers' retirement system. (1) An election under 19-21-201 to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603.

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program.

History: **En. Sec. 4, Ch. 494, L. 1987; amd. Sec. 38, Ch. 471, L. 1999; amd. Sec. 35, Ch. 490, L. 2001; amd. Sec. 21, Ch. 276, L. 2019.**

19-21-203. Contributions — supplemental contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) (a) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation and total the amounts calculated.

(ii) The board of regents shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts allocated under this subsection (1)(b)(ii) to each participant whose wages or salary and benefits are paid from the current unrestricted subfund as described in 17-2-102 are statutorily appropriated, as provided in 17-7-502, to the board of regents from the general fund.

(c) The board of regents shall contribute an amount that, when added to the sum of the participant's contribution plus the contribution made under subsection (1)(b)(ii), is equal to 13% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant's contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b), and the employer's contributions made under subsection (1)(c) must remain at 13% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

History: **En. Sec. 6, Ch. 494, L. 1987; amd. Sec. 4, Ch. 178, L. 1993; amd. Sec. 2, Ch. 419, L. 1997; amd. Sec. 39, Ch. 471, L. 1999; amd. Sec. 36, Ch. 490, L. 2001; amd. Sec. 58, Ch. 114, L. 2003; amd. Sec. 2, Ch. 306, L. 2007; amd. Sec. 42, Ch. 2, L. 2009; amd. Sec. 3, Ch. 426, L. 2009; amd. Sec. 1, Ch. 273, L. 2011.**

Cross-References

PERS — contributions, Title 19, ch. 3, part 3.
Judges' retirement fund — contributions, Title 19, ch. 5, part 4.
Highway patrol retirement — contributions, Title 19, ch. 6, part 4.
Sheriffs' retirement — contributions, Title 19, ch. 7, part 4.
Game wardens' and peace officers' retirement — contributions, Title 19, ch. 8, part 5.
Police retirement — statewide plan — contributions, Title 19, ch. 9, part 7.
Firefighters' unified retirement — contributions, Title 19, ch. 13, part 6.
Volunteer Firefighters' Compensation Act — contributions to fund, Title 19, ch. 17, part 3.
Firefighters' retirement — contributions to fund, Title 19, ch. 18, part 5.
Police retirement — local funds — contributions to funds, Title 19, ch. 19, part 3.
Teachers' retirement — annuity savings fund — member's contribution, 19-20-602.
Teachers' retirement — pension accumulation fund — employer's contribution, 19-20-605.

19-21-204 through 19-21-210 reserved.

19-21-211. Payment of benefits. A retirement, death, or other benefit may not be paid by the state or the board of regents under the university system retirement program. Benefits are payable to a participant and the participant's beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

History: **En. Sec. 7, Ch. 494, L. 1987; amd. Sec. 262, Ch. 56, L. 2009; amd. Sec. 14, Ch. 282, L. 2013.**

19-21-212. Exemption from taxation, legal process, and assessments. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the university system retirement program and the earnings on the contributions are:

(1) exempt from any county or municipal tax;
(2) not subject to execution, garnishment, attachment, or other process;
(3) not covered or assessable by an insurance guaranty association; and
(4) unassignable except as specifically provided in the contracts.

History: **En. Sec. 8, Ch. 494, L. 1987; amd. Sec. 17, Ch. 823, L. 1991; amd. Sec. 20, Ch. 552, L. 1997; amd. Sec. 7, Ch. 382, L. 2009; amd. Sec. 15, Ch. 282, L. 2013; amd. Sec. 47, Ch. 503, L. 2021.**

Cross-References

Residential property tax credit for elderly — partial exclusion of retirement benefits from income, 15-30-2337.
The Public Employees' Retirement Act — exemption from taxes and legal process — exceptions, 19-2-1004.
Firefighters' retirement — protection of benefits from legal process and taxation — nonassignability, 19-18-612.
Police retirement — local funds — protection of benefits from legal process and taxation, 19-19-504.
Teachers' retirement — exemption from taxation and legal process — exceptions, 19-20-706.
Execution of judgment, Title 25, ch. 13.
Garnishment — earnings of judgment debtor, 25-13-614.
Prejudgment attachment, Title 27, ch. 18.
Exempt property — bankruptcy proceeding, 31-2-106.
Exemption of benefits from liens of health care providers, 71-3-1118.

19-21-213. Participation by employees in positions covered by public employees' retirement system. Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program.

History: **En. Sec. 34, Ch. 490, L. 2001.**

19-21-214. Contributions and allocations for employees in positions covered under public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsections (3) and (4), of the employer's contribution received under 19-3-316:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b);

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), an amount equal to 0.27% of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;

(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member's retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).

(3) The percentage of compensation amount to be allocated under subsection (2)(b) must be increased by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation amount to be allocated under subsection (2)(b) must be 1.27%.

(4) Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, amounts equal to the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (2)(b), if any, must be allocated to the member's retirement account.

History: En. Sec. 37, Ch. 490, L. 2001; amd. Sec. 59, Ch. 114, L. 2003; amd. Sec. 8, Ch. 371, L. 2007; amd. Sec. 38, Ch. 99, L. 2011; amd. Sec. 14, Ch. 369, L. 2011; amd. Sec. 4, Ch. 170, L. 2015.

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RESERVED

CHAPTER 50
DEFERRED COMPENSATION

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Part 1
General Provisions

19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) "Deferred compensation" means the income that an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and that, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code, 26 U.S.C. 457.

(4) "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) "Fund" means the state deferred compensation investment account.

(6) "Participant" means either an employee who is enrolled or a previous employee who remains enrolled in an eligible deferred compensation plan established under this chapter.

(7) "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana, including the Montana university system.

(8) "Roth account" means a separate account within a deferred compensation plan established under this chapter that is composed of after-tax contributions made pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A.

(9) "Roth deferral" means an after-tax contribution by a participant to the participant's deferred compensation account.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981; Sec. 19-2-101, MCA 1991; redes. 19-50-101 by Code Commissioner, 1993; amd. Sec. 67, Ch. 471, L. 1999; amd. Sec. 1, Ch. 145, L. 2013; amd. Sec. 5, Ch. 140, L. 2015.

19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code, 26 U.S.C. 457, as amended, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, unless exempt from the commission's regulation;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, unless exempt from the commission's regulation; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981; Sec. 19-2-102, MCA 1991; redes. 19-50-102 by Code Commissioner, 1993; amd. Sec. 1, Ch. 37, L. 1997; amd. Sec. 109, Ch. 42, L. 1997; amd. Sec. 68, Ch. 471, L. 1999; amd. Sec. 60, Ch. 114, L. 2003; amd. Sec. 118, Ch. 429, L. 2003.

Cross-References

Investment of public funds and retirement system assets, Art. VIII, sec. 13, Mont. Const.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Financial Institutions, Title 32.
Life insurance, Title 33, ch. 20.
Life insurance — annuity contract provisions, Title 33, ch. 20, part 3.

19-50-103. No effect on other retirement programs — taxes deferred — Roth deferral exception. (1) The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and a deferral of income under the deferred compensation program may not affect a reduction of any retirement, pension, or other benefit provided by law.

(2) Except as provided in subsection (3), any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant's beneficiary because of severance from employment, retirement, or unforeseeable emergency.

(3) Effective July 1, 2013, any deferred compensation program established under this chapter may include Roth accounts and accept Roth deferrals pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A. A participant's Roth deferral into a deferred compensation account and any associated earnings, known as the participant's Roth assets, may be withdrawn tax-free if the requirements for a qualified distribution under 402A(d)(2) of the Internal Revenue Code, 26 U.S.C. 402A(d)(2), are met.

(4) For purposes of this chapter, any qualified private pension plans in existence in 1974 qualify.

History: En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981; Sec. 19-2-103, MCA 1991; redes. 19-50-103 by Code Commissioner, 1993; amd. Sec. 61, Ch. 114, L. 2003; amd. Sec. 71, Ch. 329, L. 2005; amd. Sec. 2, Ch. 145, L. 2013.

Cross-References

Local government not to affect retirement rights established by state law — may establish additional systems, 7-1-111.
Construction of net income, 15-30-2102.

19-50-104. Eligibility to catch up — normal retirement age. (1) Except as provided in subsection (2), for the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(a) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age or both age and length of service, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(ii)(I), may either:

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 50 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 50 and 70½ years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3.

History: En. Sec. 129, Ch. 99, L. 2001; amd. Sec. 72, Ch. 329, L. 2005; amd. Sec. 13, Ch. 240, L. 2013; amd. Sec. 6, Ch. 140, L. 2015.

Part 2
Administration

19-50-201. Board authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the board and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the board authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the board is the administrator of the deferred compensation program and agrees to the rules and conditions established by the board for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981; Sec. 19-2-201, MCA 1991; redes. 19-50-201 by Code Commissioner, 1993; amd. Sec. 69, Ch. 471, L. 1999.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.
Contracts generally, Title 28, ch. 2, 3.

19-50-202. Administration of program. The deferred compensation program shall be administered by the board or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; redes. 19-50-202 by Code Commissioner, 1993; amd. Sec. 70, Ch. 471, L. 1999.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the board or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; redes. 19-50-203 by Code Commissioner, 1993; amd. Sec. 71, Ch. 471, L. 1999.

Cross-References

Public funds — investments, Title 17, ch. 6, part 2.

19-50-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; redes. 19-50-204 by Code Commissioner, 1993.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

19-50-205 reserved.

19-50-206. Repealed. Sec. 73, Ch. 471, L. 1999.

History: En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.

19-50-202. Administration of programs. The deferred compensation program shall be administered by the board or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. Any contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: En. 68-2703 by Sec. 3, Ch. 284, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; redes. 19-50-202 by Code Commissioner, 1993; amd. Sec. 70, Ch. 471, L. 1999.

Cross-References

Employer to furnish itemized statement of deductions, 39-3-101.

19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the board or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 284, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; redes. 19-50-203 by Code Commissioner, 1993; amd. Sec. 71, Ch. 471, L. 1999.

Cross-References

Public funds — investments, Title 17, ch. 6, part 2.

19-50-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; redes. 19-50-204 by Code Commissioner, 1993.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

19-50-205 reserved.

19-50-206. Repealed. Sec. 72, Ch. 471, L. 1999.

History: En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.

TITLE 20

EDUCATION

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15. Community College Districts.
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25. University System.
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CHAPTER 1

GENERAL PROVISIONS

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Part 1
Definitions

20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation standards" means the body of administrative rules governing standards such as:

(a) school leadership;
(b) educational opportunity;
(c) academic requirements;
(d) program area standards;
(e) content and performance standards;
(f) school facilities and records;
(g) student assessment; and
(h) general provisions.

(2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

(3) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(4) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.

(5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils physically attending a school of the district or an offsite instructional setting or receiving remote instruction from the public schools of a district.

(6) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(7) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(8) "Career coach" means a person who, pursuant to 20-7-335, provides career technical education or K-12 career and vocational/technical education postsecondary options to pupils in a district.

(9) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(10) "County superintendent" means the county government official who is the school officer of the county.

(11) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(12) (a) "Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(13) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning through advanced opportunities, work-based learning partnerships, and other experiential learning opportunities that contribute to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(14) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes and includes time spent logging on and off when receiving remote instruction.

(b) The term does not include lunch time and periods of unstructured recess.

(15) "Offsite instructional setting" means an instructional setting that is an extension of a school of the district, located apart from the school, but within the boundaries of the district, where a school district provides in-person pupil instruction to a student who is enrolled in the district. A district shall comply with any rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting.

(16) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(17) "Pupil" means an individual who is admitted by the board of trustees pursuant to 20-5-101 and who is enrolled in a school established and maintained under the laws of the state at public expense. The eligibility of pupils and calculations for average number belonging are governed by 20-9-311.

(18) "Pupil instruction" means the conduct of organized learning opportunities for pupils enrolled in public schools while under the supervision of a teacher. The term includes any directed, distributive, collaborative, or work-based or other experiential learning activity provided, supervised, guided, facilitated, or coordinated under the supervision of a teacher that is conducted purposely to achieve content proficiency and facilitate the acquisition of knowledge, skills, and abilities by pupils enrolled in public schools, and to otherwise fulfill their full educational potential.

(19) "Qualified and effective teacher or administrator" means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

(20) "Regents" means the board of regents of higher education.

(21) "Regular school election" or "trustee election" means the election for school board members held on the day established in 20-20-105(1).

(22) "Remote instruction" means pupil instruction that occurs through virtual learning processes incorporating distance and online learning methods that best prepare pupils to meet desired learning outcomes as authorized in 20-7-118.

(23) "School election" means a regular school election or any election conducted by a district or community college district for authorizing taxation, authorizing the issuance of bonds by an elementary, high school, or K-12 district, or accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

(24) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(25) "School of the district" or "school in the district" means an accredited school operated by the district that is located within the boundaries of the district operating the school.

(26) "Special school election" means an election held on a day other than the day of the regular school election, primary election, or general election.

(27) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(28) "State university" means Montana state university-Bozeman.

(29) "Student with limited English proficiency" means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state's proficiency assessments;

(ii) the ability to successfully achieve in classrooms in which the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(30) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(31) "System" means the Montana university system.

(32) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(33) "Textbook" means a book, digital resource, or manual used as a principal source of study material for a given class or group of students.

(34) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(35) "Trustees" means the governing board of a district.

(36) "University" means the university of Montana-Missoula.

(37) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents.

History: (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec.

393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801, 75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979; amd. Sec. 1, Ch. 388, L. 1987; amd. Sec. 7, Ch. 658, L. 1987; amd. Sec. 11, Ch. 308, L. 1995; amd. Sec. 1, Ch. 133, L. 2001; amd. Sec. 2, Ch. 138, L. 2005; amd. Sec. 3, Ch. 208, L. 2005; amd. Sec. 1, Ch. 215, L. 2005; amd. Sec. 2, Ch. 570, L. 2005; amd. Sec. 198, Ch. 49, L. 2015; amd. Sec. 1, Ch. 16, L. 2019; amd. Sec. 1, Ch. 18, L. 2021; amd. Sec. 1, Ch. 247, L. 2021; amd. Sec. 1, Ch. 406, L. 2021; amd. Sec. 1, Ch. 580, L. 2023; amd. Sec. 2, Ch. 724, L. 2023.

20-1-102. Legislative goals for public elementary and secondary schools. It is the goal of the legislature that Montana's public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

(1) develops a sound foundation for literacy and numeracy during the early years that is built upon and reinforced throughout the educational experience;

(2) furthers the ability to reason critically, creatively, and strategically;

(3) fosters the ability to effectively understand and communicate ideas, knowledge, and thoughts;

(4) develops a sense of personal and civic responsibility;

(5) provides an in-depth understanding of the American political, social, and economic systems and the historical context from which they arose;

(6) provides familiarization with political, social, and economic systems found elsewhere in the world;

(7) develops a strong work ethic, postsecondary readiness, and employment skills;

(8) encourages a healthy lifestyle;

(9) supports instruction of financial literacy, where students obtain the knowledge and skills required to succeed financially; and

(10) supports instruction of avoidance of participation or involvement in and prevention of child sex trafficking and human trafficking.

History: En. Sec. 1, Ch. 208, L. 2005; amd. Sec. 1, Ch. 222, L. 2013; amd. Sec. 1, Ch. 387, L. 2023; amd. Sec. 1, Ch. 358, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 358, L. 2025. Amendment effective July 1, 2025.

Part 2
Miscellaneous Provisions

20-1-201. School officers not to act as agents. The superintendent of public instruction or members of the superintendent's staff, county superintendent or members of the superintendent's staff, trustee, or district employee may not act as an agent or solicitor in the sale or supply of goods or services to a district. An enumerated person may not assist or receive a reward from an agent or solicitor of goods or services for a district. Any person violating this section is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $50 or more than $200 and shall be liable to removal from the person's position. The penalties provided by this section may not be applicable if the charge and conviction are made under the provisions of 20-7-608.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303; amd. Sec. 263, Ch. 56, L. 2009.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.
Textbook regulation, Title 20, ch. 7, part 6.
Deceptive business practices, 45-6-317, 45-6-318.

20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. If an officer has a written appointment or commission, the officer's oath must be endorsed on the appointment or commission, otherwise the oath may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for the public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304; amd. Sec. 264, Ch. 56, L. 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oath defined, 1-1-201.
Declaration in lieu of oath, 1-6-104.
Oath of Board of Regents, 2-15-1508.
Oath of Superintendent of Public Instruction and Deputy, 20-3-102, 20-3-103.
Oath of County Superintendent of Schools, 20-3-202.
County Superintendent's power to administer oath to trustees, 20-3-205.
Oath of school trustees, 20-3-307, 20-3-309.
Teachers' oath, 20-4-104.
Oaths of community college district trustees, 20-15-210, 20-15-222.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, the person shall immediately deliver all books, papers, and money pertaining to the position to the person's successor. Any person who refuses to do so or who knowingly destroys any material or misappropriates any money entrusted to the person is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926; amd. Sec. 265, Ch. 56, L. 2009.

Cross-References
Personal immunity and liability of trustees, 20-3-332.
Criminal mischief — destruction of public property, 45-6-101.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

Cross-References
Office of County Attorney, Title 7, ch. 4, part 27.
County Attorney to assist in school district bond proceedings, 20-9-436.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

Cross-References
Limitation on activities of County Attorneys and Deputies, 7-4-2704.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $10 or more than $100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

Cross-References
Duties of pupils — sanctions, 20-5-201.
Disorderly conduct — disrupting public meeting, 45-8-101.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

Cross-References
Fines and penalties proceeds for elementary county equalization, 20-9-332.
Official misconduct, 45-7-401.

20-1-208. Educational impact statements. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

Cross-References

Taxation of major new industrial facility in school district, 20-9-407.
Major facility siting, Title 75, ch. 20.
Strip and underground mine siting, Title 82, ch. 4, part 1.

20-1-209. Judicial enforcement. A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

Cross-References

Uniform Declaratory Judgments Act, Title 27, ch. 8.
Injunctions, Title 27, ch. 19.

20-1-210. Nonfaculty coaches in private high schools. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

Cross-References

Injunctions, Title 27, ch. 19.
Athletic event officials excluded from workers' compensation coverage, 39-71-401.

20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) A school district officer or employee of any school district may not receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gatherings that the officer or employee may by virtue of the office or employment find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to the association and the necessary traveling expenses of employees or members of the board to attend meetings of the association or other meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 266, Ch. 56, L. 2009.

Cross-References

Trustee travel reimbursement and compensation of secretary for joint board, 20-3-311.
Attendance at instructional and professional development meetings, 20-4-304.

20-1-212. Destruction of records by school officer. (1) Upon the order of the board of trustees, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and, with written approval of the local government records destruction subcommittee provided for in 2-6-1202, any records not referenced in the retention and disposition schedule that are no longer needed by the office.

(2) Each student's permanent file, as defined by the board of public education, must be permanently kept in a secure location. Other student records must be maintained and destroyed as provided in subsection (1). Personnel files must be kept for 10 years after termination.

History: En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 543, L. 1983; amd. Sec. 15, Ch. 420, L. 1993; amd. Sec. 2, Ch. 323, L. 1997; amd. Sec. 1, Ch. 33, L. 2013.

Cross-References

Local government records, Title 2, ch. 6, part 12.

Destruction of certain financial records, 20-9-215.

20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) (a) By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and (8)(c) containing the name, last-known address, and dates of attendance of a student who:

(i) is at least 16 years of age but less than 19 years of age;

(ii) was enrolled but is no longer enrolled in a school in the district;

(iii) has not provided school transfer or graduation information to a school in the district; and

(iv) has not received a high school diploma or a high school equivalency diploma.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18 years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

(c) The report provided by the local educational agency may not include a student who:

(i) is receiving medical care or treatment that prohibits school attendance;

(ii) is enrolled in a foreign exchange program;

(iii) is enrolled in an early admissions college program;

(iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or

(v) is excused from school for a reason determined acceptable by the local educational agency.

(d) The official to whom the information in subsection (8)(a) is provided shall certify in writing to the local educational agency that is providing the information that the information will not be disclosed to any other party except as necessary to recruit and retain students.

(9) As used in this section, "local educational agency" means a public school district or a state-funded school.

History: En. Sec. 1, Ch. 157, L. 1997; amd. Sec. 1, Ch. 15, L. 2011; amd. Sec. 14, Ch. 55, L. 2015.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

20-1-214. School crossing guards. (1) The trustees of a school district or the administration of a private school may organize and supervise school crossing guards for a school under their authority.

(2) The department of justice shall, in cooperation with the superintendent of public instruction and in accordance with the sign manual adopted by the department of transportation, prescribe by rule the identification, training requirements, and operation of school crossing guards.

(3) The purpose of school crossing guards is to influence and encourage pupils of the school to refrain from crossing public highways at points other than regular crossings, to direct pupils as to where and when to cross highways, and to direct traffic when pupils are crossing highways at regular crossings.

History: En. Sec. 49, Ch. 352, L. 2003.

20-1-215 through 20-1-219 reserved.

20-1-220. Use of marijuana and tobacco products in public school building or on public school property prohibited. (1) An individual may not use a tobacco product, vapor product, marijuana product, or alternative nicotine product in a public school building or on public school property.

(2) (a) Subsection (1) does not apply to the use of a tobacco product, vapor product, marijuana product, or alternative nicotine product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product, vapor product, marijuana product, or alternative nicotine product.

(b) Subsection (1) does not apply to the use of a smoking cessation product by an employee.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in 50-40-115.

(5) For the purposes of this section, the following definitions apply:

(a) "Alternative nicotine product" means a manufactured noncombustible product that contains nicotine derived from tobacco and that is intended for human consumption by being chewed, absorbed, dissolved, or ingested by any other means.

(b) (i) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer.

(ii) The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, marijuana concentrates, and marijuana intended for use by smoking or vaping.

(c) "Public school building" or "public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(d) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

(e) "Vapor product" means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes:

(i) an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device; and

(ii) a vapor cartridge or other container in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product and device.

History: En. Sec. 9, Ch. 569, L. 1993; Sec. 20-5-411, MCA 1995; redes. 20-1-220 by Code Commissioner, 1997; amd. Sec. 1, Ch. 268, L. 2005; amd. Sec. 1, Ch. 357, L. 2019; amd. Sec. 28, Ch. 712, L. 2023.

Cross-References

Youth Access to Tobacco Products Control Act, Title 16, ch. 11, part 3.

Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties, 45-5-637.

20-1-221 through 20-1-224 reserved.

20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions. (1) A postsecondary educational institution may not provide student financial assistance to or enroll as a student an individual who is receiving or will receive student financial assistance unless the individual has complied with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The board of regents shall adopt rules to implement this section.

(3) The following definitions apply to this section:

(a) "Postsecondary educational institution" means:

(i) the Montana university system; or

(ii) any other postsecondary school:

(A) accepting as a student an individual receiving student financial assistance; or

(B) accepting state funds.

(b) "Student financial assistance":

(i) means a grant, loan, or insurance on a loan, all or a part of which is provided by the state; and

(ii) includes money given or to be given pursuant to:

(A) the reimbursement for services provided to resident nonbeneficiary students provision in 20-25-428;

(B) the work-study program provided for in Title 20, chapter 25, part 7;

(C) the Montana resident student financial aid program provided for in Title 20, chapter 26, parts 1 and 2; or

(D) the guaranteed student loan program provided for in Title 20, chapter 26, part 11.

History: En. Sec. 2, Ch. 320, L. 2001; amd. Sec. 1, Ch. 286, L. 2015; amd. Sec. 1, Ch. 300, L. 2019.

20-1-226 through 20-1-229 reserved.

20-1-230. Enactment — Interstate Compact on Educational Opportunity for Military Children — provisions. The Interstate Compact on Educational Opportunity for Military Children is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

ARTICLE I
PURPOSE

(1) It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school districts or variations in entrance or age requirements;

(b) facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

(c) facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

(d) facilitating the on-time graduation of children of military families;

(e) providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

(g) promoting coordination between this compact and other compacts affecting military children; and

(h) promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

(2) The purpose of the legislation and the Interstate Compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the Interstate Compact may be construed as a waiver of any state's sovereignty.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to Title 10, chapters 1209 and 1211, of the United States Code.

(2) "Children of military families" means school-aged children enrolled in kindergarten through 12th grade, in the household of an active duty member.

(3) "Compact commissioner" means the voting representative of each member state appointed pursuant to Article VIII of this compact.

(4) "Deployment" means the period 1 month prior to the service member's departure from the service member's home station on military orders though 6 months after return to the service member's home station.

(5) "Education records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(6) "Extracurricular activities" means voluntary activities sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(7) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the commission that is created under Article IX of this compact.

(8) "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through 12th grade public educational institutions.

(9) "Member state" means a state that has enacted this compact.

(10) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the department of defense, including any leased facility, that is located within any state.

(11) "Nonmember state" means a state that has not enacted this compact.

(12) "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(13) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, that implements, interprets, or prescribes a policy or provision of the compact, or that is an organizational, procedural, or practice requirement of the Interstate Commission and has the force and effect of statutory law in a member state. The term includes the amendment, repeal, or suspension of an existing rule.

(14) "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

(16) "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through 12th grade.

(17) "Transition" means:

(a) the formal and physical process of transferring from school to school; or

(b) the period of time during which a student moves from one school in the sending state to another school in the receiving state.

(18) "Uniformed service" means the army, navy, air force, marine corps, or coast guard.

(19) "Veteran" means a person who served in the uniformed services and who was discharged or released from service under conditions other than dishonorable.

ARTICLE III
APPLICABILITY

(1) Except as otherwise provided in subsection (3), this compact applies to the children of:

(a) active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to Title 10, chapters 1209 and 1211, of the United States Code;

(b) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of 1 year after medical discharge or retirement; and

(c) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of 1 year after death.

(2) The provisions of this compact apply only to local education agencies as defined in this compact.

(3) The provisions of this compact do not apply to the children of:

(a) inactive members of the national guard and military reserves;

(b) members of the uniformed services now retired, except as provided in subsection (1);

(c) veterans of the uniformed services, except as provided in subsection (1); and

(d) other U.S. department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV
EDUCATIONAL RECORDS AND ENROLLMENT

(1) In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records from a local education facility,

as defined by federal law, containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

(2) Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within 10 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(3) Receiving states shall give 30 days from the date of enrollment or a time as is reasonably determined under the rules promulgated by the Interstate Commission for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(4) Students must be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state must be eligible for enrollment in the next highest grade level in the receiving state regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from a school in the sending state.

ARTICLE V
PLACEMENT AND ATTENDANCE

(1) When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school, educational assessments conducted at the school in the sending state, or both, if the courses are offered and space is available. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, and vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

(2) The receiving state school shall initially honor placement of the student in educational programs based on space availability and current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include but are not limited to gifted and talented programs. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. This section does not require a local education agency to create programs or offer services that were not in place prior to the enrollment of the student unless the programs or services are required by federal or state law.

(3) (a) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.

(b) In compliance with the requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 through 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(4) Local education agency administrative officials have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

(5) A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting must be granted additional excused absences at the discretion of the local education agency superintendent to visit with the student's parent or legal guardian relative to the leave or deployment of the parent or guardian.

ARTICLE VI
ELIGIBILITY

(1) A special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency is prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which the child was enrolled while residing with the custodial parent.

(4) State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII
GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

(1) Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending state, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

(2) (a) In lieu of testing requirements for graduation in the receiving state, states shall accept:

(i) exit or end-of-course exams required for graduation from the sending state;

(ii) national norm-referenced achievement tests; or

(iii) alternative testing.

(b) In the event that the above alternatives cannot be accommodated by the receiving state for a student transferring to the school during the student's senior year, the provisions of subsection (3) of this article apply.

(3) If a military student transferring at the beginning of or during the student's senior year is ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (1) and (2) of this article.

ARTICLE VIII
STATE COORDINATION

(1) Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in and compliance with this compact and Interstate Commission activities. While each member state may

determine the membership of its own state council, its membership must, at a minimum, include the state superintendent of public instruction, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups that the state council considers appropriate.

(2) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(3) The compact commissioner responsible for the administration and management of the state's participation in the compact must be appointed by the governor or as otherwise determined by each member state.

(4) The compact commissioner and the military family education liaison designated herein are ex-officio members of the state council unless either is already a full voting member of the state council.

ARTICLE IX
INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the Interstate Commission on Educational Opportunity for Military Children. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(1) The Interstate Commission is a body corporate and joint agency of the member states and has all the responsibilities, powers, and duties set forth herein and additional powers that may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

(2) (a) The Interstate Commission consists of one voting representative from each member state who is that state's compact commissioner.

(b) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(c) A majority of the total member states constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) A representative may not delegate a vote to another member state. In the event that the compact commissioner is unable to attend a meeting of the Interstate Commission, the governor or state council may delegate voting authority to another person from the state for a specified meeting.

(e) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(3) The Interstate Commission consists of ex-officio, nonvoting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include but may not be limited to members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. department of defense, the education commission of the states, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

(4) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(5) The Interstate Commission shall establish an executive committee, whose members must include the officers of the Interstate Commission and any other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve 1-year terms. Members of the executive committee are entitled to one vote each. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact and its bylaws and rules and other duties considered necessary. The U.S. department of defense shall serve as an ex-officio, nonvoting member of the executive committee.

(6) The Interstate Commission shall establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Public notice must be given by the Interstate Commission of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting or portion thereof if it determines by a two-thirds vote that an open meeting would be likely to:

(a) relate solely to the Interstate Commission's internal personnel;

(b) disclose matters specifically exempted from disclosure by federal and state statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing a person of a crime or formally censuring a person;

(e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) disclose investigative records compiled for law enforcement purposes; or

(g) specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

(8) For a meeting or portion of a meeting closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The Interstate Commission shall keep minutes, which shall fully and clearly describe all matters discussed in a meeting, and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) The Interstate Commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules, which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting must, in so far as is reasonably possible, conform to current technology, and the Interstate Commission shall coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(10) The Interstate Commission shall create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section may not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

ARTICLE X
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission may:

(1) provide for dispute resolution among member states;

(2) adopt rules that have the force and effect of law and are binding in the compact states to the extent and in the manner provided in this compact and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact;

(3) issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact and its bylaws, rules, and actions;

(4) monitor compliance with the compact provisions, the rules adopted by the commission, and the bylaws;

(5) establish and maintain offices, which must be located within one or more of the member states;

(6) purchase and maintain insurance and bonds;

(7) borrow, accept, hire, or contract for services of personnel;

(8) establish and appoint committees, including but not limited to an executive committee as required by subsection (5) of Article IX of this compact, which has the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact;

(9) elect or appoint officers, attorneys, employees, agents, or consultants, fix their compensation, define their duties, and determine their qualifications, and establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(10) accept any and all donations and grants of money, equipment, supplies, materials, and services and receive, utilize, and dispose of it;

(11) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed;

(12) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

(13) establish a budget and make expenditures;

(14) adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(15) report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. The reports must also include any recommendations that may have been adopted by the Interstate Commission.

(16) coordinate education, training, and public awareness regarding the compact and its implementation and operation for officials and parents involved in such activity;

(17) establish uniform standards for the reporting, collecting, and exchanging of data;

(18) maintain corporate books and records in accordance with the bylaws;

(19) perform functions that may be necessary or appropriate to achieve the purposes of this compact;

(20) provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

(a) establishing the fiscal year of the Interstate Commission;

(b) establishing an executive committee and other committees as may be necessary;

(c) providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(d) providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each meeting;

(e) establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(f) providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;

(g) providing startup rules for initial administration of the compact.

(2) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom has authority and duties as specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers shall serve without compensation or remuneration from the Interstate Commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(3) The executive committee has authority and duties as set forth in the bylaws, including but not limited to:

(a) managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(b) overseeing an organizational structure and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(c) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

(4) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for a period, upon terms and conditions, and for compensation as the Interstate Commission considers appropriate. The executive director shall serve as secretary to the Interstate Commission, but may not be a member of the Interstate Commission. The executive director shall hire and supervise other persons as authorized by the Interstate Commission.

(5) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred or that the person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities. However, that person is not protected from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(6) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of their employment or duties for acts, errors, or omissions occurring within their state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection may be construed to protect a person from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(7) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend the Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(8) To the extent not covered by the state involved, the member state, the Interstate Commission, or the representatives or employees of the Interstate Commission must be held harmless in the amount of a settlement or judgment, including attorney fees and costs, obtained against those persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the persons.

ARTICLE XII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under the compact, then such an action by the Interstate Commission is invalid and has no force or effect.

(2) Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act revised as of 2012 as may be appropriate to the operations of the Interstate Commission.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. However, the filing of a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(4) If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule has no further force and effect in any member state.

ARTICLE XIII
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(1) Each member state shall enforce this compact to effectuate the compact's purposes and intent.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission renders a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

(4) The purpose of this compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the interstate compact may be construed as a waiver of a state's sovereignty.

(5) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the Interstate Commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state is required to cure its default.

(b) provide remedial training and specific technical assistance regarding the default.

(6) If the defaulting state fails to cure the default, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default, except that in the event of a default by this state, its total financial responsibility is limited to the amount of its most recent annual assessment.

(7) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(8) The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination up to a maximum amount of $5,000 multiplied by the number of years that the state has been a member of the compact. In the event that this state is suspended or terminated, its total financial responsibility is limited to the amount of its most recent annual assessment.

(9) The Interstate Commission may not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(10) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. district court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party must be awarded all costs of litigation, including reasonable attorney fees.

(11) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and nonmember states.

(12) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

ARTICLE XIV
FINANCING OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states to the limits as specified herein.

(3) The annual assessment applicable to this state may not exceed an amount equal to the per-student amount determined by the Interstate Commission multiplied by the latest available number of children of military families in this state.

(4) This state may not be held liable for the payment of any special assessment or other assessment other than the annual assessment in the amount established by subsection (3).

(5) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet those obligations, and the Interstate Commission may not pledge the credit of any of the member states except by and with the authority of the member state.

(6) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the Interstate Commission.

(7) All expenditures for the state, including withdrawal or dissolution costs, or both, will be determined by the Interstate Commission.

ARTICLE XV
MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

(1) Any state is eligible to become a member state, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.

(2) Withdrawal from the compact must be by the enactment of a statute repealing the compact, except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment may not become effective and binding upon the Interstate Commission and the member states unless it is enacted into law by unanimous consent of the member states.

ARTICLE XVI
WITHDRAWAL AND DISSOLUTION

(1) Once effective, the compact continues in force and remains binding upon each and every member state. However, a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.

(2) Withdrawal from this compact must be by the enactment of legislation repealing the compact except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state, except that if this state elects to withdraw from the compact by statutorily allowing for the expiration of this section, this state shall notify the chairperson of the commission when it becomes evident that the expiration will take effect. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal up to a maximum amount equal to the per-student amount determined by the Interstate Commission multiplied by the latest available number of children of military families in this state.

(5) Reinstatement following withdrawal of a member state may occur upon the withdrawing state reenacting the compact or upon a later date as determined by the Interstate Commission.

(6) (a) This compact dissolves on the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(b) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect and the business and affairs of the Interstate Commission must be concluded and surplus funds must be distributed in accordance with the bylaws.

ARTICLE XVII
SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact must be liberally construed to effectuate its purposes.

(3) Nothing in this compact may be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(2) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(3) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(4) In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XIX
STATE COUNCIL — CREATION

The state council on educational opportunity for military children must be created and consist of:

(1) the following voting members:

(a) the superintendent of public instruction, who shall serve as the chairperson;

(b) the superintendent of a school district that includes a high concentration of military children, appointed by the governor;

(c) a representative of a military installation, appointed by the governor;

(d) a legislator, appointed by the senate president;

(e) a representative of the executive branch of government, appointed by the governor; and

(f) any other individuals recommended by a majority of the members of the state council listed in subsections (1)(a) through (1)(e); and

(2) the following nonvoting members:

(a) the compact commissioner appointed under Article XX; and

(b) the military family education liaison, appointed under Article XXI.

ARTICLE XX
COMPACT COMMISSIONER — APPOINTMENT AND DUTIES

The governor shall appoint a compact commissioner who is responsible for the administration and management of the state's participation in the compact on educational opportunity for military children.

ARTICLE XXI
MILITARY FAMILY EDUCATION LIAISON — APPOINTMENT AND DUTIES

The state council shall appoint a military family education liaison to assist military families and the state in facilitating the implementation of the compact on educational opportunity for military children.

ARTICLE XXII
PROVISION OF FUNDING — ADJUTANT GENERAL

Each state's equivalent of a department of military affairs under the adjutant general shall pay all expenses incurred by the state to participate in the compact on educational opportunity for military children, including the reimbursement of actual and necessary expenses incurred by members of the state council.

History: En. Sec. 1, Ch. 321, L. 2013; amd. Sec. 1, Ch. 72, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 72, L. 2025. Amendment effective April 3, 2025.

20-1-231. Report to legislature. Representatives of the Great Falls school district, the Helena school district, and a member of the military, as specified by the adjutant general, shall provide, singly or jointly, a report in accordance with 5-11-210 to the education interim committee regarding the state's participation in the compact on educational opportunity for military children established in 20-1-230.

History: En. Sec. 2, Ch. 321, L. 2013; amd. Sec. 1, Ch. 277, L. 2015; amd. Sec. 47, Ch. 261, L. 2021.

20-1-232. Student-athlete rights and protections — definitions. (1) As used in this section, the following definitions apply:

(a) "Postsecondary institution" means a 2-year or 4-year public or private college or university located in the state.

(b) (i) "Student-athlete rights" means the rights of a student-athlete enrolled in a postsecondary institution to earn compensation for the use of the student-athlete's name, image, or likeness and to contract with and retain professional representation of an athlete agent.

(ii) The term does not include a right to receive compensation from a postsecondary institution.

(2) Except as provided in subsections (3) through (6), a postsecondary institution or an athletic association, conference, or organization with authority over intercollegiate sports may not:

(a) prohibit, prevent, or restrict a student-athlete from exercising the student-athlete's rights;

(b) penalize or retaliate against a student-athlete for exercising the student-athlete's rights;

(c) prohibit a student-athlete from participating in an intercollegiate sport for exercising the student-athlete's rights; or

(d) subject to subsection (4)(a), impose an eligibility requirement on a scholarship or grant that requires a student-athlete to refrain from exercising the student-athlete's rights.

(3) (a) A student-athlete may not enter into a contract that provides compensation to the student-athlete for the use of the student-athlete's name, image, or likeness if terms of the contract conflict with the student-athlete's team rules or with terms of a contract entered into

between the student-athlete's postsecondary institution and a third party, except the team rules or a contract entered into between the postsecondary institution and a third party may not prevent a student-athlete from earning compensation for the use of the student-athlete's name, image, or likeness when not engaged in official team activities.

(b) A student-athlete who enters into a contract that provides compensation to the student-athlete for the use of the student-athlete's name, image, or likeness shall disclose the contract to an official of the postsecondary institution if the student-athlete is a team member or, if the student-athlete is not a team member, at the time the student-athlete seeks to become a team member.

(c) If a postsecondary institution asserts that the terms of the contract conflict with the team rules or with terms of a contract entered into between the student-athlete's postsecondary institution and a third party, the unit shall disclose the specific rules or terms asserted to be in conflict to the student-athlete or to the student-athlete's professional representative or athlete agent if the student-athlete is represented.

(4) A postsecondary school may:

(a) include provisions in scholarship agreements allowing the postsecondary school to use the athlete's name, image, and likeness;

(b) prohibit the use of an athlete's name, image, and likeness on school property, at school functions, or in any advertising material distributed or placed on school property;

(c) serve as an agent for the athlete to manage any contract using an athlete's name, image, and likeness; or

(d) do any combination of subsections (4)(a) through (4)(c).

(5) Nothing in this section prohibits a postsecondary institution from establishing or enforcing a conduct code that is applicable to all students enrolled at the unit.

(6) A contract made pursuant to this section must comply with the written requirements of 28-2-903.

History: En. Sec. 1, Ch. 396, L. 2021; amd. Sec. 1, Ch. 380, L. 2025; amd. Sec. 1, Ch. 407, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 380, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 407, L. 2025. Amendment effective June 1, 2025.

20-1-233. Certain district policies prohibited. The trustees of a school district may not adopt a policy that subjects a student to disciplinary action for behavior that is not considered an unlawful discriminatory practice pursuant to 49-2-307(2), if the behavior does not rise to the definition of bullying as provided in 20-5-208.

History: En. Sec. 1, Ch. 256, L. 2023.

Part 3
School Terms and Holidays — Released Time

20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours required in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient. The minimum aggregate hours required in subsection (2) are not required for any pupil demonstrating proficiency pursuant to 20-9-311(4)(d).

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for half-time kindergarten or 720 hours for full-time kindergarten, as provided in 20-7-117;

(b) 720 hours for grades 1 through 3; and

(c) 1,080 hours for grades 4 through 12.

(3) Except for a circumstance related to an unforeseen emergency pursuant to Title 20, chapter 9, part 8, for any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d), the superintendent of public instruction shall reduce the BASE aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d).

History: **En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979; amd. Sec. 1, Ch. 148, L. 1981; amd. Sec. 1, Ch. 460, L. 1983; amd. Sec. 3, Ch. 22, L. 1997; amd. Sec. 110, Ch. 42, L. 1997; amd. Sec. 1, Ch. 430, L. 1997; amd. Sec. 5, Ch. 237, L. 2001; amd. Sec. 3, Ch. 138, L. 2005; amd. Sec. 9, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 149, L. 2017; amd. Sec. 1, Ch. 151, L. 2021; amd. Sec. 1, Ch. 96, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 96, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

Cross-References

Management of school funds by County Treasurer, 7-6-2801.
Elementary district abandonment, 20-6-209.
High school district abandonment, 20-6-307.
Formula for apportionment of county equalization money, 20-9-335.
Emergency school closure, Title 20, ch. 9, part 8.

20-1-302. School term, day, and week. (1) Subject to 20-1-301, 20-1-308, and any applicable collective bargaining agreement covering the employment of affected employees, the trustees of a school district shall set the number of days in a school term, the length of the school day, and the number of school days in a school week and report them to the superintendent of public instruction.

(2) When proposing to adopt changes to a previously adopted school term, school week, or school day, the trustees shall:

(a) negotiate the changes with the recognized collective bargaining unit representing the employees affected by the changes;

(b) solicit input from the employees affected by the changes but not represented by a collective bargaining agreement; and

(c) solicit input from the people who live within the boundaries of the school district.

History: **En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403; amd. Sec. 2, Ch. 430, L. 1997; amd. Sec. 4, Ch. 138, L. 2005.**

Cross-References

Duty of Board of Public Education to approve school day, 20-2-121(5).
Calculation of average number belonging, 20-9-311.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exceptions. (1) Except as provided in subsections (2) and (3), pupil instruction may not be conducted on Saturday or Sunday.

(2) In emergencies, including during reasonable efforts of the trustees to make up aggregate hours of instruction lost during a declaration of emergency by the trustees under 20-9-806, pupil instruction may be conducted on a Saturday when it is approved by the trustees of the school district.

(3) Pupil instruction may also be held on a Saturday at the discretion of a school district for the purpose of providing additional pupil instruction beyond the minimum aggregate hours of instruction required in 20-1-301, provided that student attendance is voluntary.

History: **En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404; amd. Sec. 1, Ch. 21, L. 2003; amd. Sec. 1, Ch. 193, L. 2011; amd. Sec. 2, Ch. 151, L. 2021.**

Cross-References

Duty of Board of Public Education to adopt policy regarding school on Saturdays, 20-2-121(6).
Power of Superintendent of Public Instruction to approve school on Saturdays, 20-3-106(17).

20-1-304. Pupil-instruction-related day. A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum aggregate hours of pupil instruction.

History: **En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405; amd. Sec. 1, Ch. 638, L. 1989; amd. Sec. 3, Ch. 430, L. 1997; amd. Sec. 5, Ch. 138, L. 2005.**

Cross-References

Duty of Board of Public Education to adopt policy on pupil-instruction-related days, 20-2-121(6).
Attendance at instructional and professional development meetings, 20-4-304.
Instructional assistance by Superintendent of Public Instruction, 20-7-114.
School closure by declaration of emergency, 20-9-806.

20-1-305. School holidays. (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

(a) New Year's Day (January 1);
(b) Memorial Day (last Monday in May);
(c) Independence Day (July 4);
(d) Labor Day (first Monday in September);
(e) Thanksgiving Day (fourth Thursday in November);
(f) Christmas Day (December 25);
(g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

Cross-References

Legal holidays, 1-1-216.
Teacher contract not to require teaching on school holidays, 20-4-201.

20-1-306. Commemorative exercises on certain days. (1) All districts shall conduct appropriate exercises on the following commemorative days:

(a) Lincoln's Birthday (February 12);
(b) Washington's Birthday (February 22);
(c) Arbor Day (last Friday in April);
(d) Flag Day (June 14);
(e) Citizenship Day (September 17);
(f) American Indian Heritage Day (fourth Friday in September);
(g) Columbus Day (October 12);
(h) Pioneer Day (November 1);
(i) Freedom Week (last full week of September), to educate students about the sacrifices made for freedom in the founding of the United States and the values on which the United States was founded;
(j) other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

(3) The trustees of a district shall adopt a policy to address and ensure the effective conduct of appropriate exercises for the commemorative days provided in subsection (1).

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407; amd. Sec. 1, Ch. 202, L. 1997; amd. Sec. 1, Ch. 320, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 320, L. 2025. Amendment effective July 1, 2025.

Cross-References

Legal holidays, 1-1-216.
Observance of right to keep and bear arms, 1-1-224.
Arbor Day as official day of observance, 1-1-225.
Official observance of Montana's hunting heritage, 1-1-226.

20-1-307. Provisions of school code excepted. Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

20-1-308. Religious instruction released time program — academic credit. (1) The trustees of a school district shall provide for a religious instruction released time program under which a pupil must be released from regular school attendance for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian. The trustees shall determine the amount of time, not less than 1 hour a week, for which a pupil may be released for religious instruction.

(2) A religious instruction released time program may not be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) Public money may not be used, directly or indirectly, for the religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and the release may not adversely affect the pupil's enrollment status or attendance record or the calculation of the school district's ANB or other funding.

(5) The trustees of a school district may adopt a policy that awards academic credit for the completion of a religious instruction released time course and recognizes the credits of an independently accredited provider of released time courses.

(6) If a school district awards academic credit for a religious instruction released time course, the school district shall evaluate the course based on secular criteria that are substantially the same criteria used to evaluate similar courses to determine how much credit to award. The decision to award credit for a released time course must be neutral to, and may not involve any test for, religious content or denominational affiliation.

(7) For the purposes of this section, secular criteria may include but are not limited to the following:

(a) the number of hours of classroom instruction time;

(b) a review of the course syllabus that reflects course requirements and materials used;

(c) the methods of assessment used in the course; and

(d) the qualifications of the course instructor.

History: En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1; amd. Sec. 1, Ch. 84, L. 2001; amd. Sec. 1, Ch. 647, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 647, L. 2025. Amendment effective July 1, 2025.

Cross-References

Equal protection of laws guaranteed, Art. II, sec. 4, Mont. Const.
No appropriation to be made for religious purposes, Art. V, sec. 11(5), Mont. Const.
Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.
Sectarian publications prohibited — religious materials allowed — prayer permitted, 20-7-112.

Part 4
Disaster Drills

20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan. (1) As used in this part, "disaster" means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan or emergency operations plan to address those hazards.

(3) (a) A board of trustees shall adopt a school safety plan or emergency operations plan that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination with the county or regional interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall review the school safety plan or emergency operations plan at least annually and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(b) The school safety plan or emergency operations plan must include the following threat assessment practices:

(i) the adoption of a threat assessment protocol, outlining policies and procedures for implementation when there is notification of a student threat of harm to others or property; and

(ii) an identified threat assessment team, composed of key staff, that meets at least monthly and may include behavioral threat assessment addressing students in need of academic and behavioral supports or interventions.

(c) The trustees shall certify annually to the office of public instruction that the adopted school safety plan or emergency operations plan has been reviewed. Once the trustees have made the certification to the office of public instruction, the trustees may transfer funds pursuant to 20-9-236 to make improvements to school safety and security.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1; amd. Sec. 1, Ch. 423, L. 1997; amd. Sec. 2, Ch. 364, L. 2013; amd. Sec. 1, Ch. 323, L. 2015; amd. Sec. 1, Ch. 248, L. 2019; amd. Sec. 1, Ch. 348, L. 2023.

20-1-402. Number of disaster drills required — time of drills to vary. There must be at least eight disaster drills a year in a school. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters.

History: En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2; amd. Sec. 2, Ch. 423, L. 1997; amd. Sec. 3, Ch. 364, L. 2013.

20-1-403. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.

20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal. (1) If a disaster drill is signaled, the signal must be sounded on the disaster alarm system and not on the signal system used to dismiss classes.

(2) The recall signal must be separate and distinct from any other signal. The recall signal may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls must be kept under lock and the key kept in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a disaster. Regardless of the method of recall, the means of giving the signal must be kept under lock.

History: En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4; amd. Sec. 3, Ch. 423, L. 1997.

20-1-405. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.

20-1-406. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.

20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills. It is the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors, and other exits are in proper condition. School authorities shall cooperate with the local authorities having jurisdiction in conducting disaster drills.

History: En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7; amd. Sec. 4, Ch. 423, L. 1997.

20-1-408. Repealed. Sec. 11, Ch. 374, L. 2003.

History: En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.

Part 5
Indian Education for All

20-1-501. Recognition of American Indian cultural heritage — legislative intent. (1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and

(b) every educational agency work in consultation with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational agencies provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: **En. Sec. 1, Ch. 527, L. 1999; amd. Sec. 1, Ch. 718, L. 2023; amd. Sec. 1, Ch. 557, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 557, L. 2025. Amendment effective July 1, 2025.

20-1-502. American Indian studies — definitions. As used in this part, the following definitions apply:

(1) "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, language, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) "Educational agency" means:

(a) the Montana university system;

(b) professional educator preparation programs accredited by the board of public education;

(c) the board of public education;

(d) the office of public instruction; and

(e) school districts.

(3) "Instruction" means:

(a) a formal course of study or class, developed in consultation with Montana tribes, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts;

(c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or

(d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel.

History: **En. Sec. 2, Ch. 527, L. 1999; amd. Sec. 2, Ch. 718, L. 2023; amd. Sec. 2, Ch. 557, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 557, L. 2025. Amendment effective July 1, 2025.

20-1-503. Indian education for all — requirements — reporting. (1) Pursuant to this part and 20-9-329 and the definition of basic system of free quality public elementary and secondary schools under 20-9-309, the board of trustees of a school district shall:

(a) require that all certified personnel and all students receive instruction in American Indian studies; and

(b) in meeting the requirements of subsection (1)(a), utilize the specialist services of Indian language and culture specialists licensed under the rules of the board of public education to the greatest extent possible.

(2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

(3) (a) Pursuant to Article X, section 1(2), of the Montana constitution, 20-1-501, 20-7-101, and 20-9-309, the board of public education shall incorporate the distinct and unique cultural heritage of Montana American Indians in the content and performance standards that schools must implement as a requirement for school accreditation.

(b) The superintendent of public instruction shall include representatives of Montana Indian tribes on negotiated rulemaking committees formed pursuant to 20-7-101 addressing the development or revision of content and performance standards under subsection (3)(a).

(4) The board of public education and the superintendent of public instruction shall abide by the guiding principles and documentation requirements under 2-15-142 in fulfilling duties pursuant to this part.

(5) Educational agencies and their personnel are encouraged to participate in ongoing education in American Indian studies.

(6) The office of public instruction shall:

(a) create an online portal for submitting feedback from parents, students, and educators about the implementation of the requirements of this part;

(b) respond to and address the feedback received in a manner that aims to continually improve the quality of American Indian studies under this part; and

(c) report annually to the education interim committee and the state-tribal relations committee in accordance with 5-11-210 on:

(i) the feedback received, responses provided, and improvements made under this subsection (6); and

(ii) school districts failing to report or report satisfactorily in the same manner as described in 20-9-329(6)(a).

(7) In supporting school districts in fulfilling the requirements of this part, the office of public instruction shall integrate its efforts to the greatest extent possible with the Montana Indian language preservation program under 20-9-537.

History: En. Sec. 3, Ch. 527, L. 1999; amd. Sec. 3, Ch. 718, L. 2023; amd. Sec. 3, Ch. 557, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 557, L. 2025. Amendment effective July 1, 2025.

Part 6

Montana Military Service Higher Education Act

20-1-601. Short title. This part may be cited as the "Montana Military Service Higher Education Act".

History: En. Sec. 1, Ch. 270, L. 2015.

20-1-602. Purpose. The purpose of this part is to protect the educational rights of members of the reserve armed forces of the United States and of the Montana national guard who are students at a Montana educational institution and whose education is interrupted by mandatory mobilization to active duty.

History: En. Sec. 2, Ch. 270, L. 2015.

20-1-603. Definitions. As used in this part, the following definitions apply:

(1) (a) "Active duty" means federally funded duty performed pursuant to orders issued under Title 10 or Title 32 of the United States Code, state active duty performed pursuant to Article VI, section 13, of the Montana constitution, or state duty for special work performed pursuant to 10-1-505.

(b) The term does not include active duty for regularly scheduled weekend or annual training or active duty ordered by request of the service member.

(2) "Annual training" means federally funded duty performed pursuant to Title 10, U.S.C., or Title 32, U.S.C.

(3) "Educational institution" means an institution of higher education under the jurisdiction of the board of regents.

(4) "Eligible student" means a member of a reserve component of the United States armed forces as defined in 38 U.S.C. 101, or of the Montana national guard as defined in 10-1-101.

(5) "Inactive duty training" means federally funded duty performed pursuant to Title 10, U.S.C., or Title 32, U.S.C.

(6) "Same academic status" means the same:

(a) certificate or degree program; and

(b) standing or progress within a certificate or degree program.

History: En. Sec. 3, Ch. 270, L. 2015; amd. Sec. 1, Ch. 458, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 458, L. 2025. Amendment effective October 1, 2025.

20-1-604. Student rights. (1) An eligible student may not be denied admission or readmission to an educational institution on the basis of the student's membership in the reserve component of the United States armed forces or in the Montana national guard.

(2) If an eligible student is ordered to active duty while enrolled in one or more courses at an educational institution, the faculty shall, when consistent with accreditation requirements:

(a) assign a final passing grade in the course if, in the faculty's judgment, enough of the course requirements have been completed;

(b) assign an incomplete in the course and extend the period of time in which the student may complete course requirements; or

(c) allow the student to withdraw from the course and receive financial credit as provided in 20-1-605.

(3) If an eligible student reenrolls in one or more courses at an educational institution within 12 months after returning from the active duty that interrupted the student's previous enrollment at the institution, the student must, to the extent possible, be readmitted with the same academic status that the student had when ordered to active duty, unless the student requests or agrees to admission with a different academic status.

(4) (a) If an eligible student misses an assignment, exam, midterm, or final because of inactive duty training or annual training while enrolled in one or more courses at an educational institution, the eligible student shall provide notice of the absence at least 5 business days ahead of time to the course faculty, unless a shorter notice period is required because of military necessity.

(b) If the eligible student provides notice pursuant to subsection (4)(a), the faculty shall, when consistent with accreditation requirements, give the eligible student at least 15 business days to make up the missed assignment, exam, midterm, or final, unless the educational institution certifies that a shorter make-up period is necessary to comply with federal financial aid requirements or graduation requirements.

(c) If an educational institution certifies a need for a shorter make-up period pursuant to subsection (4)(b), the make-up period may not be less than 5 business days.

History: En. Sec. 4, Ch. 270, L. 2015; amd. Sec. 2, Ch. 458, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 458, L. 2025. Amendment effective October 1, 2025.

20-1-605. Financial credit — readmission fees prohibited — refund. (1) Except as provided in subsection (2):

(a) if an eligible student reenrolls at an educational institution within 12 months after returning from the active duty that interrupted the student's previous enrollment at the institution, the student must receive financial credit for the amount of tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to 20-1-604;

(b) the student must be allowed to apply the amount of the financial credit toward any tuition and fees charged for courses the student enrolls in after being readmitted to the institution;

(c) the student may not be charged any readmission fees;

(d) if a student does not reenroll within the timeframe required under subsection (1)(a) due to an illness or injury, including posttraumatic stress disorder, documented by a licensed physician and incurred while performing the active duty, the student is entitled to a refund of the amount of the tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to 20-1-604.

(2) If the provisions of subsection (1) are inconsistent with the requirements of a financial aid provider, the higher education institution must provide the student with the greatest benefit allowable under the requirements of the provider.

History: En. Sec. 5, Ch. 270, L. 2015.

20-1-606. Policy to ensure student protections. The commissioner of higher education may develop a policy for action by the board of regents that is consistent with the goals and steps in this part to ensure academic protections for students called to active duty.

History: En. Sec. 6, Ch. 270, L. 2015.

CHAPTER 2
STATE BOARDS AND COMMISSIONS

Part 1 — State Board of Education — Board of Public Education — Board of Regents

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
20-2-102 through 20-2-110 reserved.
20-2-111. Officers of boards — quorum.
20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
20-2-113. Per diem of board members — expenses.
20-2-114. Adoption of rules — seal — record of proceedings.
20-2-115. Repealed.
20-2-116 through 20-2-120 reserved.
20-2-121. Board of public education — powers and duties.
20-2-122. Executive secretary to board of public education — staff.
20-2-123 through 20-2-130 reserved.
20-2-131. Commissioner of higher education — duties — compensation — staff.

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Part 4 — Commission on Federal Higher Education Programs

20-2-401. Definition.
20-2-402. Purpose.
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Part 5 — Compact for Education

20-2-501. Compact for Education approved.
20-2-502. Appointment of commissioners to the education commission of the states.
20-2-503. State obligations or rights under compact not altered.
20-2-504. Bylaws filed.
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Part 1
State Board of Education — Board of Public Education — Board of Regents

Part Cross-References

Boards of Education created — duties, Art. X, sec. 9, Mont. Const.; Title 2, ch. 15, part 15.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least once yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615; amd. Sec. 2, Ch. 21, L. 1985; amd. Sec. 1, Ch. 112, L. 2023.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-102 through 20-2-110 reserved.

20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a presiding officer from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other duties as assigned by the board of public education.

History: En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612; amd. Sec. 3, Ch. 21, L. 1985; amd. Sec. 267, Ch. 56, L. 2009.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the presiding officer, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613; amd. Sec. 4, Ch. 21, L. 1985; amd. Sec. 268, Ch. 56, L. 2009.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614; amd. Sec. 6, Ch. 650, L. 1985.

20-2-114. Adoption of rules — seal — record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.

Cross-References

Seals defined, 1-4-201.

Manner of making seal, 1-4-202.

Regents' rulemaking power exempt from Montana Administrative Procedure Act, 2-4-102.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

20-2-115. Repealed. Sec. 6, Ch. 208, L. 2005.

History: En. Sec. 1, Ch. 691, L. 1985; amd. Sec. 1, Ch. 395, L. 1987; amd. Sec. 55, Ch. 633, L. 1993.

20-2-116 through 20-2-120 reserved.

20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions of 20-1-303 and 20-1-304;

(6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(11) adopt rules for student assessment in the public schools; and

(12) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979; amd. Sec. 1, Ch. 94, L. 1983; amd. Sec. 1, Ch. 312, L. 1983; amd. Sec. 1, Ch. 377, L. 1987; amd. Sec. 40, Ch. 633, L. 1993; amd. Sec. 7, Ch. 138, L. 2005.

Cross-References

Duties of Board of Public Education, Art. X, sec. 9, Mont. Const.

20-2-122. Executive secretary to board of public education — staff. The board of public education may:

(1) appoint an executive secretary and employ other persons within legislatively authorized appropriations;

(2) prescribe the term, duties, and compensation of its executive secretary;

(3) provide office space for its staff to carry out its duties.

History: En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2; amd. Sec. 1, Ch. 405, L. 1983.

20-2-123 through 20-2-130 reserved.

20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set the commissioner's compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for carrying out the commissioner's duties.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3); amd. Sec. 269, Ch. 56, L. 2009.

Cross-References

Regents to appoint Commissioner of Higher Education, Art. X, sec. 9, Mont. Const.

Parts 2 and 3 reserved

Part 4

Commission on Federal Higher Education Programs

Part Cross-References

Commission on Federal Higher Education Programs, 2-15-1515.

20-2-401. Definition. Unless the context requires otherwise, in this part "commission" means the commission on federal higher education programs provided for in 2-15-1515.

History: En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

20-2-402. Purpose. It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

20-2-403. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, Public Law 88-204, as amended by Public Law 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, Public Law 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

Part 5
Compact for Education

20-2-501. Compact for Education approved. The Compact for Education established by the education commission of the states is enacted into law and entered into with all other jurisdictions legally joining in the compact, in the form substantially as follows:

THE COMPACT FOR EDUCATION

ARTICLE I
PURPOSE AND POLICY

(1) It is the purpose of this compact to:

(a) establish and maintain close cooperation and understanding among executive, legislative, professional educational, and lay leadership on a nationwide basis at the state and local levels;

(b) provide a forum for the discussion, development, crystallization, and recommendation of public policy alternatives in the field of education;

(c) provide a clearinghouse of information on matters relating to education problems and how they are being met in different places throughout the nation; and

(d) facilitate the improvement of state and local education systems.

(2) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement, and administration of education systems and institutions.

(3) The states that have entered into this compact recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own education systems and institutions.

ARTICLE II
STATE DEFINED

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III
THE COMMISSION

(1) The education commission of the states (commission) is hereby established. The commission consists of seven members representing each state that has entered into the compact. One of the state members must be the governor, two must be members of the legislature selected by its respective houses and serving in a manner as the legislature may determine, one must be

the state superintendent of public instruction, and three must be appointed by and serve at the pleasure of the governor. The guiding principle for the composition of the membership on the commission from each party state must be that the members representing the state shall, by virtue of their training, experience, knowledge, or affiliations, reflect broadly the interests of the state government, higher education, the state education system, local education, and public and nonpublic educational leadership. In addition to the members of the commission representing the party states, there may be no more than 10 nonvoting commissioners selected by the steering committee for terms of 1 year. The commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission are entitled to one vote each on the commission. Any action of the commission is not binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor of the action. Any action of the commission must be taken only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to any directions and limitations as may be contained in the bylaws, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV, and adoption of the annual report pursuant to Article III(10).

(3) The commission must have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, who must be a governor; a vice presiding officer; and a treasurer. The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission and, together with the treasurer and other personnel as the commission may consider appropriate, must be bonded in an amount determined by the commission. The executive director shall serve as secretary.

(5) The executive director, subject to the approval of the steering committee, shall appoint, remove, or discharge any personnel as may be necessary for the performance of the functions of the commission. The executive director shall fix the duties and compensation of the personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept, or contract for the services of personnel.

(7) The commission may accept for any of its purposes and functions under this compact any donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation and may receive, utilize, and dispose of any gifts and grants. Any donation or grant accepted by the commission pursuant to this section or services borrowed pursuant to subsection (6) of this article must be reported in the annual report of the commission. The report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(8) The commission may establish and maintain any facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest in property.

(9) The commission shall adopt bylaws for the conduct of its business and may amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy of its bylaws and any amendments with the appropriate agency or officer in each state that has entered into this compact.

(10) The commission annually shall make and provide to the governor and legislature of each state that has entered into the compact a report covering the activities of the commission for the preceding year. The commission may make any additional reports as it considers desirable.

ARTICLE IV
POWERS

In addition to any authority conferred on the commission by other provisions of the compact, the commission may:

(1) collect, correlate, analyze, and interpret information and data concerning educational needs and resources;

(2) encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public education systems;

(3) develop proposals for adequate financing of education as a whole and at each of its many levels;

(4) conduct or participate in research in any instance where it finds that the research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional organizations for higher education, and other agencies and institutions, both public and private;

(5) formulate suggested policies and plans for the improvement of public education as a whole, or for any segment of public education, and make recommendations with respect to public education available to the appropriate governmental units, agencies, and public officers; and

(6) do other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to the compact.

ARTICLE V
COOPERATION WITH FEDERAL GOVERNMENT

(1) If the laws of the United States specifically provide, or if administrative provision is made within the federal government, the United States may be represented on the commission by not more than 10 representatives. A representative of the United States must be appointed and serve in the manner as may be provided by federal law and may be drawn from any one or more branches of the federal government. A representative of the United States may not have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states and may confer with any federal agencies or officers concerning any matter of mutual interest.

ARTICLE VI
COMMITTEES

(1) To assist in the conduct of its business when the full commission is not meeting, the commission shall elect a steering committee that, subject to the provisions of this compact and consistent with the policies of the commission, is constituted and functions as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee must consist of governors, one-fourth must consist of legislators, and the remainder must consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but may not vote. The voting members of the steering committee shall serve a term of 2 years. The presiding officer, vice presiding officer, and treasurer of the commission must be members of the steering committee and, notwithstanding anything in this section to the contrary, shall serve during their continuance in these offices. Vacancies on the steering committee do not affect its authority to act, but the commission at its next regular meeting following the occurrence of any vacancy shall fill it for the unexpired term. A person may not serve more than two terms as a member of the steering committee, provided that service for a partial term of 1 year or less may not be counted toward the limitation.

(2) The commission may establish advisory and technical committees composed of state, local, or federal officers and private persons to advise it with respect to any one or more of its functions. An advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the states that have entered into this compact.

(3) The commission may establish any additional committees as its bylaws may provide.

ARTICLE VII
FINANCE

(1) The commission shall advise the governor or designated officer of each state that has entered into this compact of its budget and estimated expenditures for any period as may be

required by the laws of that state. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amount to be appropriated by each of the states.

(2) The total amount of appropriation requests under any budget must be apportioned among the states. In making the apportionment, the commission shall devise and employ a formula that takes equitable account of the population and per capita levels of income of the states.

(3) The commission may not pledge the credit of any state. The commission may meet any of its obligations in whole or in part with money available to it pursuant to Article III of this compact, provided that the commission takes specific action setting aside the money before incurring an obligation to be met in whole or in part in that manner. Except when the commission makes use of money available to it pursuant to Article III, the commission may not incur any obligation before receiving an allotment of money from the states that is adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the procedures for audit and accounting established by its bylaws. However, all receipts and disbursements of money handled by the commission must be audited yearly by a qualified public accountant. The report of the audit must be included in and become part of the annual report of the commission.

(5) The accounts of the commission must be open at any reasonable time for inspection by officers of the states that have entered into this compact and by any other persons authorized by the commission.

(6) The provisions in this compact may not prohibit compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII
ELIGIBLE PARTIES — ENTRY INTO AND WITHDRAWAL

(1) This compact has as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With respect to any jurisdiction not having a governor, the term "governor", as used in this compact, means the closest equivalent officer of the jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this compact and it becomes binding when it is adopted by that state or jurisdiction, except that in order to enter into initial effect, adoption by at least 10 eligible jurisdictions is required.

(3) Any state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal may not take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other states that have entered into this compact. Withdrawal does not affect any liability already incurred by or chargeable to a state before its withdrawal.

ARTICLE IX
AMENDMENTS TO THE COMPACT

This compact may be amended by a vote of two-thirds of the members of the commission present and voting when ratified by the legislatures of two-thirds of the states that have entered into this compact.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to accomplish its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be unconstitutional, or the application of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact may not be affected. If this compact is held to be contrary to the constitution of any state participating in the compact, the compact remains in effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 273, L. 2001.

20-2-502. Appointment of commissioners to the education commission of the states. (1) The seven members of the education commission of the states representing Montana are:

(a) the governor;
(b) one senator appointed by the committee on committees;
(c) one representative appointed by the speaker of the house;
(d) the superintendent of public instruction; and
(e) three persons appointed by the governor, including:
(i) one educator engaged in the field of higher education; and
(ii) two educators engaged in the field of K-12 education.

(2) The term of each commissioner appointed by the legislature is 4 years, and legislators shall serve until the expiration of their appointments, even though their legislative terms may have ended. The commissioners appointed by the governor shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 273, L. 2001.

20-2-503. State obligations or rights under compact not altered. The provisions of this part may not be construed to alter any of the obligations or restrict or impair any rights that this state may have under the compact.

History: En. Sec. 3, Ch. 273, L. 2001.

20-2-504. Bylaws filed. Pursuant to Article III(9) of 20-2-501, the commission shall file a copy of its bylaws and amendments to the bylaws with the secretary of state.

History: En. Sec. 4, Ch. 273, L. 2001.

20-2-505. Limitation on power — adoption of rules. (1) The provisions of this part may not be construed to bind or obligate the state of Montana to enact any new legislation or to amend any current laws pertaining to the administration and financing of education in Montana.

(2) The superintendent of public instruction may adopt rules that incorporate by reference the bylaws and any amendments to the bylaws provided for in Article III(9) of 20-2-501.

History: En. Sec. 5, Ch. 273, L. 2001.

CHAPTER 3
ELECTED OFFICIALS

Part 1 — Superintendent of Public Instruction

20-3-101. Election and qualifications.
20-3-102. Term, oath, and vacancy.
20-3-103. Deputy superintendent — staff.
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20-3-105. Administrative powers and duties.
20-3-106. Supervision of schools — powers and duties.
20-3-107. Controversy appeal.
20-3-108. Division of resources and assessment funds.
20-3-109. Honorary high school diploma for certain veterans.
20-3-110. State high school diploma — duties of superintendent of public instruction — rulemaking.

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20-3-201. Election and qualifications — part-time office allowed.
20-3-202. Term, oath, and vacancy.
20-3-203. Office costs and staff.
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20-3-206. Additional positions.
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20-3-208. Authority to request, accept, and disburse money.
20-3-209. Annual report.
20-3-210. Controversy appeals and hearings.
20-3-211. Disqualification of county superintendent.
20-3-212. The county superintendent to appoint another county superintendent.
20-3-213. Part-time office — establishment — restrictions.

Part 3 — School District Trustees

20-3-301. Election and term of office.
20-3-302. Legislative intent to elect less than majority of trustees.
20-3-303. Term of vacated trustee position after election.
20-3-304. Repealed.
20-3-305. Candidate qualification, filing deadline, and withdrawal.
20-3-306. Conduct of election.
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20-3-311. Trustee travel reimbursement and compensation of secretary for joint board.
20-3-312. Trustees of district affected by boundary change.
20-3-313. Election by acclamation — notice.
20-3-314. School district trustee information.
20-3-315 through 20-3-320 reserved.
20-3-321. Organization and officers.
20-3-322. Meetings and quorum.
20-3-323. District policy and record of acts.
20-3-324. Powers and duties.
20-3-325. Clerk of district.
20-3-326. Information on educational opportunities — duties of trustees.
20-3-327 through 20-3-329 reserved.
20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan.
20-3-331. Purchase of insurance — self-insurance plan.
20-3-332. Personal immunity of trustees.
20-3-333. Repealed.
20-3-334 and 20-3-335 reserved.
20-3-336. Single-member trustee districts — legislative intent — minority defined.
20-3-337. Plan for creating single-member trustee districts — petition election.
20-3-338. Trustees elected by single-member district.
20-3-339 and 20-3-340 reserved.
20-3-341. Number of trustee positions in elementary districts — transition.
20-3-342. Determination of terms after reorganization of elementary districts.
20-3-343. Determination of terms after change of district classification.
20-3-344. Repealed.
20-3-345 through 20-3-350 reserved.
20-3-351. Number of trustee positions in high school districts.
20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.
20-3-353. Establishment and purpose of trustee nominating districts.
20-3-354. Redetermination of additional trustee positions and subsequent adjustments.
20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.
20-3-356. Membership of elected trustees of county high school district and nomination of candidates.
20-3-357 through 20-3-360 reserved.
20-3-361. Joint board of trustees organization and voting membership.
20-3-362. Powers of joint board of trustees.
20-3-363. Multidistrict agreements — fund transfers.
20-3-364 and 20-3-365 reserved.
20-3-366. Qualifying district health insurance trusts — qualifications — definitions — rulemaking.
20-3-367. District withdrawal — procedures.
20-3-368. Dissolution — disqualification.
20-3-369. State school health trust operating reserve account — distribution and uses.
20-3-370. Repayment of initial reserve from state from excess reserves.

Chapter Cross-References

General election provisions, Title 13, ch. 1.
Election and campaign practices and criminal provisions, Title 13, ch. 35.
Control of campaign practices, Title 13, ch. 37.
School elections, Title 20, ch. 20.

Part 1
Superintendent of Public Instruction

Part Cross-References

Superintendent as part of Executive Branch, Art. VI, sec. 1, Mont. Const.

20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana must be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) A person is qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of election;

(b) has resided within the state for the 2 years preceding the election;

(c) holds at least a bachelor's degree from an accredited college or university; and

(d) otherwise possesses the qualifications for office that are required by The Constitution of the State of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702; amd. Sec. 270, Ch. 56, L. 2009; amd. Sec. 1, Ch. 168, L. 2023.

Cross-References

Election of Superintendent of Public Instruction, Art. VI, sec. 2, Mont. Const.
Qualifications of Superintendent of Public Instruction, Art. VI, sec. 3, Mont. Const.
Rules for determining residence, 1-1-215.

20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for a term of 4 years. The superintendent shall assume office on the first Monday of January following election and shall hold the office until a successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it must be filled in the manner prescribed by The Constitution of the State of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703; amd. Sec. 271, Ch. 56, L. 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.
Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.
Oath defined, 1-1-201.
Affirmation in lieu of oath, 1-6-104.
Bonds of state officers and employees, Title 2, ch. 9, part 6.

20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in that office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering on the performance of the deputy's duties. If the superintendent of public instruction has fewer than 5 years of teaching or school administrative experience, the superintendent shall appoint a deputy with at least 5 years of teaching or school administrative experience.

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist in the administration of the duties and services of the office. In organizing the staff, the superintendent of public instruction may employ:

(a) a professional staff with expertise in curriculum, instruction, and assessment;

(b) specialists in curriculum and instruction in the content areas contained in the accreditation standards adopted by the board of public education under 20-7-101;

(c) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(d) a professional staff consisting of individuals prepared in career and technical education program areas, including but not limited to agriculture education, business and marketing education, family and consumer sciences education, health science education, and industrial technology education; and

(e) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education.

History: (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979; amd. Sec. 1, Ch. 436, L. 1987; amd. Sec. 8, Ch. 658, L. 1987; amd. Sec. 2, Ch. 249, L. 1991; amd. Sec. 2, Ch. 133, L. 2001; amd. Sec. 2, Ch. 168, L. 2023.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.
Oath defined, 1-1-201.
Affirmation in lieu of oath, 1-6-104.
Bonds of state officers and employees, Title 2, ch. 9, part 6.
Vocational education, Title 20, ch. 7, part 3.
Special education, Title 20, ch. 7, part 4.

20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for K-12 career and vocational/technical education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants that may be required to carry out the duties of the office.

History: En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979; amd. Sec. 3, Ch. 133, L. 2001.

Cross-References

Vocational education, Title 20, ch. 7, part 3.
Transportation, Title 20, ch. 10.

20-3-105. Administrative powers and duties. In administering the affairs of the office, the superintendent of public instruction has the power and it is the superintendent's duty to:

(1) keep a record of official acts and all documents applicable to the administration of the office, preserve all official reports submitted to the superintendent for the period required by law, and surrender them to the superintendent's successor at the expiration of the term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value that come into the superintendent's possession and surrender them to the superintendent's successor at the expiration of the term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which official acts must be authenticated;

(5) if considered necessary, cause the printing of a complete and updated volume of the school laws of the state, which must be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It must be offered and sold at cost of the printing and shipping to any school official or other person.

(7) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(8) call an annual meeting of the county superintendents when considered advisable;

(9) as far as practicable, address public assemblies on subjects pertaining to education in Montana; and

(10) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706; amd. Sec. 6, Ch. 125, L. 1983; amd. Sec. 1, Ch. 410, L. 1987; amd. Sec. 272, Ch. 56, L. 2009; amd. Sec. 1, Ch. 118, L. 2013.

Cross-References

Duties of Superintendent of Public Instruction, Art. VI, sec. 4, Mont. Const.
Seals, Title 1, ch. 4, part 2.
Public records, Title 2, ch. 6.
Distribution of missing school children list, 44-2-503, 44-2-506.

20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313.

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education in accordance with the provisions of 20-7-101;

(18) evaluate compliance with the accreditation standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979; amd. Sec. 12, Ch. 598, L. 1979; amd. Sec. 1, Ch. 299, L. 1985; amd. Sec. 2, Ch. 377, L. 1987; amd. Sec. 3, Ch. 635, L. 1987; amd. Sec. 9, Ch. 658, L. 1987; amd. Sec. 7, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 767, L. 1991; amd. Sec. 1, Ch. 325, L. 1993; amd. Sec. 4, Ch. 633, L. 1993; amd. Sec. 4, Ch. 219, L. 1997; amd. Sec. 1, Ch. 311, L. 1997; amd. Sec. 2, Ch. 388, L. 1997; amd. Sec. 4, Ch. 430, L. 1997; amd. Sec. 1, Ch. 343, L. 1999; amd. Sec. 4, Ch. 133, L. 2001; amd. Sec. 2, Ch. 21, L. 2003; amd. Sec. 1, Ch. 374, L. 2003; amd. Sec. 1, Ch. 379, L. 2015; amd. Sec. 1, Ch. 240, L. 2023.

Cross-References

State Board of Land Commissioners — membership on, Art. X, sec. 4, Mont. Const.

20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for a decision of a county superintendent or an arbitrator in a teacher termination case; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make a decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction is final, subject to the proper legal remedies in the state courts. The proceedings must be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, the superintendent of public instruction shall appoint a hearings examiner as provided in 2-4-611 and the decision of the hearings examiner constitutes the superintendent's final order except as provided in this subsection. The final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979; amd. Sec. 1, Ch. 438, L. 1997.

Cross-References
Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Perjury, 45-7-201.
False swearing, 45-7-202.

20-3-108. Division of resources and assessment funds. Funds derived from the sale of educational materials or services provided by the division of resources and assessment must be deposited in the state general fund.

History: En. Sec. 1, Ch. 436, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 66, Ch. 370, L. 1987; amd. Sec. 1, Ch. 470, L. 1987; amd. Sec. 29, Ch. 422, L. 1997.

Cross-References
Special accounts, Title 17, ch. 2, part 2.

20-3-109. Honorary high school diploma for certain veterans. (1) The superintendent of public instruction may award an honorary high school diploma to a current or former Montana resident who:

(a) did not receive a high school diploma; and

(b) actively served in the United States armed services during World War II from 1939 through 1947, during the Korean war from 1950 through 1953, or during the Vietnam conflict from 1961 through 1975; and

(i) died in active service;

(ii) was honorably discharged; or

(iii) was released from active duty because of a service-related disability.

(2) (a) The superintendent shall identify acceptable documentation of eligibility and establish procedures for applying for an honorary diploma.

(b) The superintendent may accept an affidavit to support the award if acceptable documentation is not readily available from the military or other sources.

(3) An eligible person shall apply for the diploma on a form provided by the superintendent. If an eligible person is deceased or incapacitated, an immediate family member may apply on the person's behalf.

History: En. Sec. 1, Ch. 171, L. 2003.

20-3-110. State high school diploma — duties of superintendent of public instruction — rulemaking. (1) The superintendent of public instruction shall develop a process through which a resident of the state who has exhausted, in the determination of the superintendent, the possibility of earning a diploma from a high school accredited by the board of public education can pursue a Montana proficiency-based diploma by demonstrating:

(a) proficiency of the content standards adopted by the board of public education through alternative means; and

(b) perseverance and dedication in accomplishing a rigorous, long-term goal requiring maturity and the application of knowledge to real-world situations.

(2) When an individual demonstrates proficiency, perseverance, and dedication as determined by the superintendent of public instruction under subsection (1), the superintendent may issue to the individual a Montana proficiency-based diploma.

(3) An individual enrolled in a home school or nonpublic school is not eligible for a Montana proficiency-based diploma under this section.

(4) The superintendent of public instruction shall by rule prescribe the eligibility and qualifications for pursuing a Montana proficiency-based diploma under this section.

History: En. Sec. 1, Ch. 223, L. 2021.

Part 2
County Superintendent of Schools

Part Cross-References
County officers generally, Title 7, ch. 4.
Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.
Membership in associations of County School Superintendents — payment of expenses, 7-5-2146.

20-3-201. Election and qualifications — part-time office allowed. (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Upon verification by the county clerk and recorder, a person is qualified to file for and assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid, current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory certificate issued by the superintendent of public instruction; and

(c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

(i) another county superintendent, with the approval of the governing body of that county;

(ii) a former county superintendent; or

(iii) a person who:

(A) is a qualified elector;

(B) holds a valid administrative certificate as provided in 20-4-106(1)(c);

(C) takes the oath of office in 20-1-202;

(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and

(E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used.

(4) The board of county commissioners may establish the office of county superintendent as a part-time office under the provisions of 20-3-213, and adjust the salary established in 7-4-2503 to make it commensurate with the reduction in hours. A part-time county superintendent shall perform all duties of that office that are required by law.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979; amd. Sec. 1, Ch. 550, L. 1985; amd. Sec. 1, Ch. 76, L. 1991; amd. Sec. 1, Ch. 146, L. 1993.

Cross-References

General qualifications for county office, 7-4-2201.
Consolidation of county offices, Title 7, ch. 4, part 23.
Salary, 7-4-2503.

20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. The county superintendent shall:

(a) take the oath of office on or before the last business day of December following the superintendent's election;

(b) assume office at 12:01 a.m. on January 1 following the superintendent's election; and

(c) hold the office until a successor has been elected and qualified.

(2) Any person elected as the county superintendent shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. The replacement shall serve until the next general election, when a person must be elected to serve the remainder of the initial term, if there is any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803; amd. Sec. 273, Ch. 56, L. 2009; amd. Sec. 199, Ch. 49, L. 2015.

Cross-References

Constitutional oath, Art. III, sec. 3, Mont. Const.
Oaths, Title 1, ch. 6; 2-16-211; 20-1-202.
Term of office of county officers, 7-4-2205.
Vacancies in county offices generally, 7-4-2206.

20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent must be paid from the county general fund all necessary traveling expenses actually incurred in discharging duties, after the expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint the candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804; amd. Sec. 274, Ch. 56, L. 2009.

Cross-References

Deputy county officers in general, Title 7, ch. 4, part 24.

20-3-204. Office hours. (1) Except for a part-time county superintendent provided for under 20-3-201(4), the county superintendent of schools shall, during the office hours determined by the governing body, keep the office of the county superintendent open each day when the county superintendent is not engaged in the supervision of schools, except legal holidays and Saturdays. However, when the county superintendent has a deputy or clerk, the office must be kept open during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent, each day except legal holidays and Saturdays.

(2) This section does not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part); amd. Sec. 2, Ch. 146, L. 1993; amd. Sec. 7, Ch. 216, L. 1995.

Cross-References

Office hours, 7-4-102.

20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the ANB of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title;

(l) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(m) estimate increases in ANB in accordance with the provisions of 20-9-313;

(n) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(o) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(p) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(q) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(r) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(s) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(t) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(u) administer the oath of office to trustees without the receipt of pay for administering the oath;

(v) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(w) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(x) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county reorganize, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202.

History: (1) thru (22)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (23) thru (26)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979; amd. Sec. 5, Ch. 317, L. 1981; amd. Sec. 1, Ch. 35, L. 1989; amd. Sec. 8, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 767, L. 1991; amd. Sec. 6, Ch. 563, L. 1993; amd. Sec. 48, Ch. 633, L. 1993; amd. Sec. 4, Ch. 22, L. 1997; amd. Sec. 101, Ch. 584, L. 1999; amd. Sec. 2, Ch. 220, L. 2001; amd. Sec. 6, Ch. 237, L. 2001; amd. Sec. 2, Ch. 151, L. 2003; amd. Sec. 1, Ch. 463, L. 2005; amd. Sec. 5, Ch. 510, L. 2005; amd. Sec. 10, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 152, L. 2011; amd. Sec. 2, Ch. 96, L. 2025; amd. Sec. 1, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 96, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 466, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

20-3-206. Additional positions. In the capacity as county superintendent, the county superintendent shall also serve as:

(1) the presiding officer of the county transportation committee, as prescribed by 20-10-131;

(2) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806; amd. Sec. 5, Ch. 219, L. 1997; amd. Sec. 275, Ch. 56, L. 2009.

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

(1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;

(2) special visits to the schools on request of the trustees;

(3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;

(4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.

20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the use of the money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

History: En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979; amd. Sec. 276, Ch. 56, L. 2009.

Cross-References

Power to accept gifts, 20-6-601.

Fiscal duties of trustees, 20-9-213.

20-3-209. *(Temporary)* **Annual report.** The county superintendent of each county shall submit an annual report to the superintendent of public instruction on or before September 15. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.

20-3-209. *(Effective July 1, 2026)* **Annual report.** The county superintendent of each county shall submit an annual report to the superintendent of public instruction on or before September 15. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the revenue amounts used to establish the levy requirements for:

(a) the county school funds for supporting school district BASE budgets, as prescribed by 20-9-362;

(b) the county school fund supporting school district transportation schedules, as prescribed by 20-10-146; and

(c) the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.

History: En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809; amd. Sec. 2, Ch. 35, L. 1989; amd. Sec. 5, Ch. 22, L. 1997; amd. Sec. 2, Ch. 343, L. 1999; amd. Sec. 1, Ch. 276, L. 2003; amd. Sec. 4, Ch. 152, L. 2011; amd. Sec. 3, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Duty of teachers to report, 20-4-301.

Duty of trustees to report to County Superintendent, 20-9-213(6).

20-3-210. Controversy appeals and hearings. (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent. The county superintendent shall hear and decide all controversies arising under:

(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the hearing.

(4) Except for teacher termination cases, the decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction. In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript of the hearing and any other documents entered as testimony at the hearing to the district court.

(5) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979; amd. Sec. 1, Ch. 252, L. 1991; amd. Sec. 1, Ch. 439, L. 1991; amd. Sec. 7, Ch. 563, L. 1993; amd. Sec. 8, Ch. 438, L. 1997.

Cross-References

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) the county superintendent is a party to or has an interest in the controversy;

(2) the county superintendent is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that the party has reason to believe and does believe that the party cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or

(4) the controversy involves the education or possible identification of a child with a disability.

History: En. Sec. 1, Ch. 489, L. 1979; amd. Sec. 1, Ch. 236, L. 1987; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 277, Ch. 56, L. 2009.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

20-3-212. The county superintendent to appoint another county superintendent. (1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

History: En. Sec. 2, Ch. 489, L. 1979.

20-3-213. Part-time office — establishment — restrictions. (1) A board of county commissioners that intends to establish the office of county superintendent of schools as a part-time office shall:

(a) pass a resolution stating the intent of the board to consider the action;

(b) set a date for a hearing on the issue and provide proper notice of the hearing;

(c) conduct a hearing and accept testimony from any registered elector of the county who presents evidence for or against the establishment of the part-time office; and

(d) within 5 days of the hearing, issue an order regarding the establishment of the part-time office.

(2) A board may not issue an order establishing the office of county superintendent as a part-time office less than 7 days before the date on which declarations for nominations may first be filed for the office.

(3) A board may not establish the office of county superintendent as a part-time office during a term of office for which a county superintendent has been elected as a full-time officeholder.

History: En. Sec. 3, Ch. 146, L. 1993.

Part 3
School District Trustees

Part Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title is subject to election. Except as provided in 20-3-313, a school trustee election must be held annually on the regular school election day established in 20-20-105(1).

(2) The term of office for each position must be 3 years unless it is otherwise specifically prescribed by this title.

(3) The board of trustees must be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(4) The number of trustee positions in a district must vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

History: (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906; amd. Sec. 200, Ch. 49, L. 2015.

Cross-References

Campaign finance provisions not to apply to election of school trustees, 13-37-206.

District classification, 20-6-201, 20-6-301.

20-3-302. Legislative intent to elect less than majority of trustees. (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In county high school districts, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the reorganization of school districts under the provisions of 20-6-423;

(b) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(c) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(d) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(e) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907; amd. Sec. 2, Ch. 528, L. 1991; amd. Sec. 1, Ch. 137, L. 1993; amd. Sec. 6, Ch. 219, L. 1997; amd. Sec. 6, Ch. 510, L. 2005; amd. Sec. 2, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 466, L. 2025. Amendment effective July 1, 2025.

Cross-References

District classification, 20-6-201, 20-6-301.

Appointment of trustees when new high school district created, 20-6-313.

20-3-303. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

20-3-304. Repealed. Sec. 262, Ch. 49, L. 2015.

History: **En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979; amd. Sec. 2, Ch. 514, L. 1999.**

20-3-305. Candidate qualification, filing deadline, and withdrawal. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) (a) Except as provided in subsection (2)(b), a declaration of intent to be a candidate must be submitted to the clerk of the district no sooner than 145 days and no later than 85 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for the position for which the candidate is filing must also be indicated.

(b) A person seeking to become a write-in candidate for a trustee position shall file a declaration of intent no later than 5 p.m. on the 65th day before the election.

(3) (a) A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate filed. The statement of withdrawal must be acknowledged by the clerk of the district.

(b) A candidate may not withdraw after 5 p.m. on the candidate filing deadline provided in subsection (2)(a).

History: **En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913; amd. Sec. 1, Ch. 372, L. 1987; amd. Sec. 4, Ch. 539, L. 1987; amd. Sec. 3, Ch. 514, L. 1999; amd. Sec. 1, Ch. 271, L. 2011; amd. Sec. 201, Ch. 49, L. 2015; amd. Sec. 2, Ch. 652, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 652, L. 2025. Amendment effective October 1, 2025.

Cross-References

Unlawful for trustee to be employed by or have certain contracts with trustee's school district, 20-9-204.

Regular school election day and special school elections, 20-20-105.

20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-313. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

History: **En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979; amd. Sec. 2, Ch. 132, L. 1999; amd. Sec. 202, Ch. 49, L. 2015.**

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-307. Qualification and oath. (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall qualify by taking an oath of office administered by the county superintendent, the superintendent's designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular school election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916; amd. Sec. 3, Ch. 132, L. 1999; amd. Sec. 2, Ch. 271, L. 2011; amd. Sec. 203, Ch. 49, L. 2015.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-3-308. Vacancy of trustee position. (1) An elected trustee position is vacant whenever the incumbent:

(a) dies;

(b) resigns;

(c) moves the trustee's residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;

(d) is no longer a registered elector of the district under the provisions of 20-20-301;

(e) is absent from the district for 60 consecutive days;

(f) fails to attend three consecutive meetings of the trustees without a good excuse;

(g) has been removed under the provisions of 20-3-310; or

(h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position is also vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

History: En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917; amd. Sec. 278, Ch. 56, L. 2009.

Cross-References

Rules for determining residence, 1-1-215.

Vacancy in community college trustee position, 20-15-223.

20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare the position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of the appointment. If the trustees do not make the appointment within the 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify the person of the appointment.

(2) A person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of appointment. Failure to file the oath of office constitutes a continuation of the trustee position vacancy that must be filled under the provisions of this section.

(3) A person assuming a trustee position under the provisions of this section shall serve until the next regular school election and until a successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979; amd. Sec. 279, Ch. 56, L. 2009.

Cross-References

Filling vacancy in community college trustee position, 20-15-223.

20-3-310. Trustee removal. Any trustee may be removed from the trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are brought against a trustee and good cause is shown, the board of county commissioners may suspend the trustee from the trustee position until the charges can be heard in the court of competent jurisdiction.

History: En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919; amd. Sec. 280, Ch. 56, L. 2009.

Cross-References

Notice of removal, 2-16-503.

Montana Recall Act, Title 2, ch. 16, part 6.

Removal for acceptance of emoluments, 20-7-608.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district may not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place must be reimbursed at the rate as provided in 2-18-503 for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees must be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931; amd. Sec. 281, Ch. 56, L. 2009.

Cross-References

Rules for determining residence, 1-1-215.

20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, territory transfer, or any other method of changing district boundaries, except by the reorganization of districts under 20-6-423, continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of district reorganization, the appointed trustees of the resulting district shall assume their trustee positions under the authority of 20-6-423.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531; amd. Sec. 7, Ch. 219, L. 1997; amd. Sec. 7, Ch. 510, L. 2005; amd. Sec. 1, Ch. 60, L. 2009; amd. Sec. 3, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 466, L. 2025. Amendment effective July 1, 2025.

Cross-References

Elementary and high school districts, Title 20, ch. 6, parts 2 and 3.

School district reorganization, Title 20, ch. 6, part 4.

20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may cancel the election.

(2) If the election is canceled, the trustees shall give notice that a trustee election will not be held. Notice must be given no later than 30 days before the election.

(3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

(4) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section.

History: En. Sec. 1, Ch. 132, L. 1999; amd. Sec. 4, Ch. 15, L. 2001; amd. Sec. 1, Ch. 132, L. 2009; amd. Sec. 3, Ch. 271, L. 2011; amd. Sec. 204, Ch. 49, L. 2015; amd. Sec. 15, Ch. 242, L. 2017.

20-3-314. School district trustee information. (1) The office of public instruction shall create a repository, accessible through its website, that makes the following information readily available for each school district of the state, which is updated within 14 days following the qualification and oathtaking under 20-3-307 of a newly elected trustee or for the filling of a vacancy on the board:

(a) a list of current trustees, including the terms the trustees are serving and, if applicable, the trustee district;

(b) contact information for current trustees;

(c) if the board of trustees maintains a website, a link to the website; and

(d) contact information for the school district clerk.

(2) The office of public instruction shall collaborate with school district clerks in developing the most efficient means to implement the requirements of this section.

History: En. Sec. 1, Ch. 276, L. 2023.

20-3-315 through 20-3-320 reserved.

20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular school election day and after the issuance of the election certificates to the newly elected trustees, but not later than 25 days after the election. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927; amd. Sec. 4, Ch. 514, L. 1999; amd. Sec. 1, Ch. 14, L. 2011; amd. Sec. 4, Ch. 271, L. 2011; amd. Sec. 205, Ch. 49, L. 2015; amd. Sec. 1, Ch. 154, L. 2019.

Cross-References

Regular school election day and special school elections, 20-20-105.

Certificate of election, 20-20-416.

20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final budget meeting, as prescribed by 20-9-131; and

(c) (i) in first-class elementary districts, not less than one regular meeting each month; or

(ii) in any other district, regular meetings at least quarterly.

(2) The trustees shall provide advance notice for the meeting in compliance with 2-3-103 and shall provide an agenda to the public in advance of the meeting.

(3) (a) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c)(i) or (1)(c)(ii) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in subsection (3)(b), meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.

(b) This section does not prohibit the trustees from meeting outside the boundaries of the school district for collaboration or cooperation on educational issues with other school boards, educational agencies, or cooperatives. Decisionmaking may occur only at a properly noticed meeting held within the school district's boundaries.

(4) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation.

(5) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(6) For the purposes of this section, "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.

History: **En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930; amd. Sec. 2, Ch. 154, L. 1991; amd. Sec. 1, Ch. 50, L. 1993; amd. Sec. 1, Ch. 211, L. 1997; amd. Sec. 1, Ch. 467, L. 1999; amd. Sec. 1, Ch. 86, L. 2003; amd. Sec. 1, Ch. 438, L. 2005; amd. Sec. 1, Ch. 444, L. 2009; amd. Sec. 7, Ch. 396, L. 2023.**

20-3-323. District policy and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title;

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction;

(c) adopt a grievance policy that provides for informal and formal resolutions of a complaint, informs a grievant about the grievance policy, provides a printed version of the grievance policy on request, and accepts for filing a formal complaint submitted within 30 days of the completion of an informal resolution; and

(d) adopt a student protection policy requiring that prior to the district allowing an individual, regardless of employment status with the district, unsupervised contact with students while in school, at a school-sponsored activity, or in transit to a school-sponsored activity:

(i) the individual has completed a fingerprint-based national criminal history background check pursuant to the educator licensure policies of the board of public education; or

(ii) (A) the individual has provided to the Montana department of justice information and material sufficient to obtain a fingerprint-based national criminal history background check; and

(B) the trustees, the superintendent of the district, or another individual designated by the trustees has reviewed the results of the background check.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

History: **En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979; amd. Sec. 1, Ch. 305, L. 2023; amd. Sec. 1, Ch. 716, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 716, L. 2025. Amendment effective July 1, 2025.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

20-3-324. *(Temporary)* **Powers and duties.** As prescribed elsewhere in this title, the trustees of a district shall exercise supervision and control of the schools of the district in providing its educational program pursuant to Article X, section 8, of the Montana constitution, and shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, and operating reserve amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the educational program of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title. In undertaking its duties related to the district's educational program, the board of trustees may:

(a) waive any specific course requirement otherwise required for graduation based on individual student needs and performance levels, age, maturity, interest, and aspirations of the pupil, in consultation with the pupil's parents or guardians; and

(b) provide credit for a course satisfactorily completed in a period of time shorter or longer than normally required as set forth in 20-9-311(4)(d) or through content proficiency gained through alternative means. Examples of alternative means by which content proficiency may be achieved include but are not limited to correspondence, extension, and distance learning courses, adult education, summer school, work study, work-based learning partnerships, and other experiential learning opportunities, custom-designed courses, and challenges to current courses. Montana schools shall accept units of credit taken with the approval of the accredited Montana school in which the student was then enrolled and which appear on the student's official school transcript.

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag representing the United States and manufactured in the United States that measures not less than 3 feet by 5 feet;

(24) provide that an American flag representing the United States and manufactured in the United States that measures at least 16 inches by 24 inches be prominently displayed in each classroom in each school of the district no later than the beginning of the school year, except in a classroom in which the flag may get soiled. Districts are encouraged to work with military organizations and civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a military organization or civic group.

(25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.

(26) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(30) submit a plan to correct the noncompliance and prevent future instances of noncompliance to the superintendent of public instruction for failure to implement the district's student protection policy required in 20-3-323(1)(d); and

(31) perform any other duty and enforce any other requirements for the governance of the schools pursuant to the constitutional power of supervision and control of schools vested in elected school boards pursuant to Article X, section 8, of the Montana constitution as prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

20-3-324. *(Effective July 1, 2026)* **Powers and duties.** As prescribed elsewhere in this title, the trustees of a district shall exercise supervision and control of the schools of the district in providing its educational program pursuant to Article X, section 8, of the Montana constitution, and shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget revenue requirement, over-BASE budget levy, and operating reserve amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the educational program of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title. In undertaking its duties related to the district's educational program, the board of trustees may:

(a) waive any specific course requirement otherwise required for graduation based on individual student needs and performance levels, age, maturity, interest, and aspirations of the pupil, in consultation with the pupil's parents or guardians; and

(b) provide credit for a course satisfactorily completed in a period of time shorter or longer than normally required as set forth in 20-9-311(4)(d) or through content proficiency gained through alternative means. Examples of alternative means by which content proficiency may be achieved include but are not limited to correspondence, extension, and distance learning courses, adult education, summer school, work study, work-based learning partnerships, and other experiential learning opportunities, custom-designed courses, and challenges to current courses. Montana schools shall accept units of credit taken with the approval of the accredited Montana school in which the student was then enrolled and which appear on the student's official school transcript.

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag representing the United States and manufactured in the United States that measures not less than 3 feet by 5 feet;

(24) provide that an American flag representing the United States and manufactured in the United States that measures at least 16 inches by 24 inches be prominently displayed in each classroom in each school of the district no later than the beginning of the school year, except in a classroom in which the flag may get soiled. Districts are encouraged to work with military organizations and civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a military organization or civic group.

(25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.

(26) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(30) submit a plan to correct the noncompliance and prevent future instances of noncompliance to the superintendent of public instruction for failure to implement the district's student protection policy required in 20-3-323(1)(d); and

(31) perform any other duty and enforce any other requirements for the governance of the schools pursuant to the constitutional power of supervision and control of schools vested in elected school boards pursuant to Article X, section 8, of the Montana constitution as prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987; amd. Sec. 2, Ch. 498, L. 1989; amd. Sec. 9, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 767, L. 1991; amd. Sec. 1, Ch. 402, L. 1993; amd. Sec. 5, Ch. 633, L. 1993; amd. Sec. 6, Ch. 22, L. 1997; amd. Sec. 2, Ch. 311, L. 1997; amd. Sec. 102, Ch. 584, L. 1999; amd. Sec. 5, Ch. 133, L. 2001; amd. Sec. 2, Ch. 377, L. 2001; amd. Sec. 3, Ch. 21, L. 2003; amd. Sec. 2, Ch. 340, L. 2003; amd. Sec. 8, Ch. 138, L. 2005; amd. Sec. 21, Ch. 44, L. 2007; amd. Sec. 1, Ch. 266, L. 2013; amd. Sec. 6, Ch. 75, L. 2019; amd. Sec. 2, Ch. 247, L. 2021; amd. Sec. 1, Ch. 253, L. 2021; amd. Sec. 1, Ch. 640, L. 2023; amd. Sec. 4, Ch. 424, L. 2025; amd. Sec. 2, Ch. 716, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 2, Ch. 716, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Montana Administrative Procedure Act not applicable, 2-4-102.
Cooperative agreements with Indian tribes, Title 18, ch. 11.
Pupils, Title 20, ch. 5.
School districts, Title 20, ch. 6.
Trustees of elementary and high school districts to have same powers and duties, 20-6-101(3).
School instruction and special programs, Title 20, ch. 7.

School finance, Title 20, ch. 9.
Duties of trustees relating to food services, 20-10-204.
School elections, Title 20, ch. 20.

20-3-325. Clerk of district. (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees must have one of their members or a district employee act as clerk for the meeting, and that person shall supply the clerk with a certified copy of the proceedings. The clerk of the district must be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(b) prepare the annual trustees' report required under the provisions of 20-9-213.

(2) The clerk of the district shall provide the county treasurer with a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of $50,000. If the clerk of the district fails to provide the required 30-hour notice, the district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.

(3) In order to qualify for the payment provided in 20-9-327, a clerk of the district must have a job description that includes performance of the following functions for the district:

(a) advise the trustees on financial and operational constraints as outlined by law;

(b) serve as a member of the administrative team, working closely with the district superintendent and other administrative staff to align the educational goals and financial stability of the district;

(c) assist the trustees in ensuring all district policies comply with local, state, and federal laws;

(d) attend trustees' meetings and ensure that a permanent record is maintained as required by law and, if unable to attend, ensure a qualified designee maintains an accurate permanent record;

(e) act as the custodian of all documents, records, and reports of the trustees, including the trustees' report required under 20-9-213;

(f) maintain accurate and detailed accounting records of all financial transactions of the district, serving as a liaison during any financial and labor audits, as required; and

(g) serve as the election administrator for the district unless the county administers an election at the request of the district.

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935; amd. Sec. 1, Ch. 196, L. 2005; amd. Sec. 1, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Cross-References

Execution of contracts of employment, 20-4-201, 20-4-401.
Signing of emergency budget, 20-9-165.
Countersigning of warrants, 20-9-221.
Execution of bonds, 20-9-433.
Notification of bond payments, 20-9-442.
Duty to prepare trustee election ballots, 20-20-401.

20-3-326. Information on educational opportunities — duties of trustees. (1) The board of trustees of a school district shall develop, update, and annually provide to students and families of the district information on the educational opportunities available through the schools of the district. The information must align to the legislative intent of preserving and protecting the right to access personalized learning as set forth in 20-7-1601 and must be designed to empower families in understanding the options available to them in partnering with schools to develop their child's full educational potential. A school board may satisfy its obligation through the use of model resources developed by an organization of school boards of which the school board is a member.

(2) The information provided under subsection (1) must include, at a minimum, the following educational and extracurricular opportunities:

(a) evaluation and identification of children with disabilities and special education programs beginning at age 3 pursuant to 20-7-411;

(b) early targeted interventions pursuant to 20-7-1801 through 20-7-1804;

(c) part-time enrollment of a student who is otherwise enrolled at a nonpublic or home school pursuant to 20-5-101;

(d) admission to a school of a district beginning at age 5 pursuant to 20-5-101, and the option to enroll a child half-time in a kindergarten program pursuant to 20-7-117;

(e) proficiency-based learning and other forms of personalized learning pursuant to 20-7-1601, including options for obtaining course equivalency and course waiver determinations from the board of trustees pursuant to 20-3-324(18);

(f) participation in extracurricular activities, including participation by nonpublic and home school students pursuant to 20-5-112;

(g) access to remote instruction, including through the Montana digital academy pursuant to Title 20, chapter 7, part 12, and through other school districts as provided in 20-7-118;

(h) out-of-district attendance pursuant to Title 20, chapter 5, part 3;

(i) availability of funding to support student access to advanced opportunities, if applicable to a district pursuant to 20-7-1506;

(j) career and technical education pursuant to Title 20, chapter 7, part 3, including the attainment of industry-recognized credentials and work-based learning, pursuant to 20-7-1510;

(k) early college, dual enrollment, and running start opportunities, pursuant to 20-9-706; and

(l) other opportunities for school-age children through Montana public schools that:

(i) support the development of a child's full educational potential;

(ii) assist in reducing the costs of postsecondary education and workforce preparation; and

(iii) foster life success.

(3) The legislature intends that boards of trustees and organizations of boards of trustees communicate and collaborate with the education interim committee to demonstrate the implementation of the requirements of this section and to identify additional opportunities following legislative sessions.

History: En. Sec. 3, Ch. 693, L. 2023; amd. Sec. 7, Ch. 693, L. 2023; amd. Sec. 3, Ch. 96, L. 2025; amd. Sec. 2, Ch. 439, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 96, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 439, L. 2025. Amendment effective May 5, 2025.

Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

20-3-327 through 20-3-329 reserved.

20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan. (1) Except as provided in subsection (2), the trustees of a school district with a self-insured health benefit plan holding reserve funds shall use these funds to pay claims and other liabilities of the district's health benefit plan.

(2) Upon dissolution of a district's self-insured health benefit plan, all remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

History: En. Sec. 1, Ch. 324, L. 2007.

20-3-331. Purchase of insurance — self-insurance plan. (1) To provide the district, trustees, and employees with liability insurance pursuant to 2-9-211 and group health and life insurance pursuant to 2-18-702, the trustees of a district may:

(a) purchase insurance coverage;

(b) participate in a district health insurance trust as defined in 20-3-366 for group health insurance; or

(c) establish a self-insurance plan for the district, trustees, and employees for liability as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702.

(2) The trustees shall include the cost of coverage in the district's general fund or in any other legally available fund, including the internal service fund referenced in subsection (3).

(3) Whenever the trustees of a district establish a self-insurance plan or participate in a district health insurance trust as defined in 20-3-366, the trustees shall establish an internal service fund to account for the activities of the self-insurance plan.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979; amd. Sec. 73, Ch. 575, L. 1981; amd. Sec. 1, Ch. 15, L. 1985; amd. Sec. 2, Ch. 299, L. 1985; amd. Sec. 10, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 568, L. 1991; amd. Sec. 7, Ch. 770, L. 2023.

20-3-332. Personal immunity of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983; amd. Sec. 1, Ch. 310, L. 1999; amd. Sec. 1, Ch. 343, L. 2007; amd. Sec. 2, Ch. 14, L. 2011.

Cross-References

State or other governmental entity immune from exemplary or punitive damages, 2-9-105.
Delivering items to successor, 20-1-203.
Trustee removal, 20-3-310.
Acceptance of emoluments, 20-7-608.
Costs, Title 25, ch. 10.
Joint and several liability — right of contribution, 27-1-703.
Official misconduct, 45-7-401.

20-3-333. Repealed. Sec. 14, Ch. 309, L. 1981.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

20-3-334 and 20-3-335 reserved.

20-3-336. Single-member trustee districts — legislative intent — minority defined. (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district:

(i) if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law; or

(ii) pursuant to a petition as provided in 20-3-337.

(2) "Minority", as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10301, as amended.

History: En. Sec. 1, Ch. 539, L. 1987; amd. Sec. 1, Ch. 548, L. 2001; amd. Sec. 6, Ch. 14, L. 2021.

20-3-337. Plan for creating single-member trustee districts — petition election. (1) Except as provided in subsection (8), the board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) A change in the boundaries of a trustee district may not be made within 3 months preceding a regular school election.

(8) If the board receives a petition signed by 10% or more of the qualified electors of the school district, the board shall submit the request to create a single-member trustee district to the electors who are qualified under 20-20-301 to vote on the request. The petition submitted to the board must:

(a) conform to the requirements of subsections (2)(a) and (2)(b);

(b) be forwarded to the secretary of state and the superintendent of public instruction for review and comment;

(c) include a map of the proposed single-member trustee district, identifying the boundaries of each new single-member trustee district and the implementation date of the district;

(d) be forwarded to the county clerk and recorder, designating the boundary lines and limits of each single-member trustee district; and

(e) include a plan for election and terms of trustees of the single-member district, who must be residents of the proposed district, and provide for the terms of successors to the board of trustees in a single-member trustee district approved by the electors.

(9) If the petition meets the requirements of subsection (8), the board shall call an election on the question of whether to create a single-member trustee district. The election must be held at the next school election scheduled pursuant to 20-20-105 and must be conducted in the manner prescribed by this title for school elections. The published notice must include a map and a description of the boundaries of the proposed district.

(10) If a majority of the votes cast at the election approve the creation of a single-member trustee district, the election administrator shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(11) When a trustee position becomes vacant in a single-member district, the position must be filled in accordance with the provisions of 20-3-309, except that the position must be filled by a person who resides within the single-member district.

History: En. Sec. 2, Ch. 539, L. 1987; amd. Sec. 2, Ch. 548, L. 2001; amd. Sec. 206, Ch. 49, L. 2015.

20-3-338. Trustees elected by single-member district. (1) At each regular school election, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

History: **En. Sec. 3, Ch. 539, L. 1987; amd. Sec. 207, Ch. 49, L. 2015.**

20-3-339 and 20-3-340 reserved.

20-3-341. Number of trustee positions in elementary districts — transition. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district; however, on a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election if notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(3) There must be three trustee positions in a third-class elementary district; however, on a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election if notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) (a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated at the time of the first subsequent regular school election and one position is eliminated at the next regular school election.

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.

History: **En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1); amd. Sec. 1, Ch. 591, L. 1989; (4)En. Sec. 2, Ch. 591, L. 1989; amd. Sec. 1, Ch. 45, L. 1993; amd. Sec. 208, Ch. 49, L. 2015.**

20-3-342. Determination of terms after reorganization of elementary districts. Whenever the trustees are elected at one regular school election under the circumstances described in 20-3-302(2)(a), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be:

(1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;

(2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or

(3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

History: **En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908; amd. Sec. 8, Ch. 219, L. 1997; amd. Sec. 4, Ch. 466, L. 2025.**

Compiler's Comments

2025 Purported Amendment: Section 4, Ch. 466, L. 2025, purported to amend this section. However, only the section catchline was changed. Pursuant to 1-11-103(5), section catchlines are not part of the law, so no substantive change occurred.

20-3-343. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of the district under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office, which must be one for 3 years and one for 2 years.

History: **En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910; amd. Sec. 9, Ch. 219, L. 1997.**

Cross-References

Elementary district classification, 20-6-201.

20-3-344. Repealed. Sec. 262, Ch. 49, L. 2015.

History: **En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1; amd. Sec. 5, Ch. 539, L. 1987; amd. Sec. 282, Ch. 56, L. 2009.**

20-3-345 through 20-3-350 reserved.

20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

(3) An additional trustee may be elected as the presiding officer of a high school district but may not vote on issues pertaining only to the elementary district. The additional trustee, as the presiding officer of the board, has all other powers, protections, and obligations of a presiding officer of an elementary district, including those under 2-3-203.

History: **En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3); amd. Sec. 3, Ch. 528, L. 1991; amd. Sec. 10, Ch. 219, L. 1997; amd. Sec. 1, Ch. 91, L. 2005; amd. Sec. 3, Ch. 14, L. 2011.**

Cross-References

Definition of elementary and high school districts, 20-6-101.
Elementary district classification, 20-6-201.
High school district classification, 20-6-301.

20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(e) An additional trustee may serve as the presiding officer of the board of trustees of an elementary district in accordance with 20-3-321(3).

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-year, 2-year, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903; amd. Sec. 1, Ch. 528, L. 1991; amd. Sec. 11, Ch. 219, L. 1997; amd. Sec. 1, Ch. 151, L. 2001; amd. Sec. 4, Ch. 14, L. 2011.

20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, the county superintendent shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There must be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries must be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district is to establish a representative district for the nomination and election of a resident of the district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district are the only electors who may vote for the additional trustee representing the district. They must also be permitted to vote for a trustee position at large, if there is one, but not for any other high school trustee position.

(3) Any additional trustee position established under the provisions of this section must be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section is subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904; amd. Sec. 283, Ch. 56, L. 2009.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within the high school district or there is a reclassification of the elementary district that has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon the order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, the additional trustee positions must be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section is subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979; amd. Sec. 284, Ch. 56, L. 2009.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions. (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by number of members elected must be:

(a) two for 3 years, if four are elected;

(b) one for 3 years, if one, two, or three are elected;

(c) one for 2 years, if two, three, or four are elected; and

(d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and the terms must be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909; amd. Sec. 12, Ch. 219, L. 1997.

20-3-356. Membership of elected trustees of county high school district and nomination of candidates. (1) The trustees of a county high school district must include the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, the districts must have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924; amd. Sec. 13, Ch. 219, L. 1997.

Cross-References

Rules for determining residence, 1-1-215.

Transactions after approved county high school unification, 20-6-313.

20-3-357 through 20-3-360 reserved.

20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees must be members of the joint board of trustees and each member must have the right to participate in the meetings, but voting on matters considered by the joint board is limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, a presiding officer of the joint board of trustees must be selected from among the membership. A secretary of the joint board must be selected from the membership. The presiding officer, when selected as a voting member, may not be disqualified from voting because of the position. The secretary may not be a voting member except that the secretary shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees must be equalized among the trustee membership of the participating districts. After the selection of the presiding officer and the secretary, if necessary, the voting membership is:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case that member may not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by the trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a). The names of the voting membership selected by the trustees must be submitted in writing to the secretary of the board and are the only members of the district's trustees eligible to vote on joint board matters unless the list is revised in writing by the trustees.

(5) Each voting member is entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board shall remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

(7) A school district that elects to participate in a joint board formed under this section for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928; amd. Sec. 1, Ch. 308, L. 1987; amd. Sec. 285, Ch. 56, L. 2009; amd. Sec. 1, Ch. 9, L. 2019.

Cross-References

Authority of joint board to operate junior high school, 20-6-505.
Funding for special education cooperatives, 20-7-457.

20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

(d) prescribe and administer joint administrative policy;

(e) jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services; and

(f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979; amd. Sec. 2, Ch. 308, L. 1987; amd. Sec. 1, Ch. 343, L. 1989; amd. Sec. 2, Ch. 9, L. 2019.

20-3-363. Multidistrict agreements — fund transfers. (1) (a) The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts, including full joint funding and operation of all programs and services of the participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section.

(b) A multidistrict agreement may include an agreement through which one district provides culturally rooted instruction aligned to a learning environment for English language learners or an Indian language immersion program to pupils of a district participating in the multidistrict agreement. The costs and other terms of service must be reflected in the multidistrict agreement.

(c) An agreement must include provisions for dissolution of the cooperative, including the conditions under which dissolution may occur and the disposition of any remaining funds that had been transferred to an interlocal cooperative fund in support of the cooperative. An agreement must be approved by the boards of trustees of all participating districts and must include a provision specifying terms upon which a district may exit the multidistrict cooperative.

(2) All expenditures in support of the multidistrict agreement may be made from each participating school district's interlocal cooperative fund. The board of trustees of each participating district of the multidistrict cooperative may transfer funds into the district's interlocal cooperative fund from the district's general fund, budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund. Transfers to the district's interlocal cooperative fund from the school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. Transfers from the retirement fund and debt service fund are prohibited. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law.

(3) Expenditures from the interlocal cooperative fund under this section may include any expenditures that are considered by the board of trustees of the district to be reasonable and necessary to efficiently and effectively finance the expenditures pursuant to the terms of the multidistrict agreement, not to exceed the total expenditures approved by the board of trustees for the budgeted fund from which the transfer was made, including expenditures pursuant to any budget amendment adopted pursuant to 20-9-165.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(5) (a) Beginning in school fiscal year 2027, school districts that achieve the legislative goal for countywide resource sharing outlined in this subsection (5) must receive a 50% increase in their total quality educator and qualified staff payment as defined in 20-9-306.

(b) The legislative goal for countywide resource sharing is for each school district with a majority of its territory in a county to participate in a countywide multidistrict agreement as specified in this subsection (5). To receive the enhanced incentive, the multidistrict agreement executed by the participating districts must:

(i) include at least all school districts with a majority of their territory within the boundaries of the same county. Provided that at least all school districts in at least one county have entered into a multidistrict agreement under this subsection (5), other school districts located in other counties that participate in the multidistrict agreement must also receive the enhanced total quality educator and qualified staff payment calculated in accordance with subsection (5)(a).

(ii) provide for the joint funding and operation of the participating districts as described in this subsection (5);

(iii) contractually allocate an amount at least equal to each district's general fund direct state aid for the support of joint funding and operations among all participating districts as described in this subsection (5); and

(iv) to the extent of the funds committed, jointly and mutually establish, maintain, budget, and finance the programs of the participating districts identified under this subsection (5). Activities must be in compliance with the accreditation standards of the board of public education and may include the sharing of staff among the participating districts when that is consistent with collective bargaining, if applicable, and when that is determined by the board of trustees of each participating school district to be the most efficient and effective use of district staff. The programs of the participating districts that are mutually administered must include, at a minimum:

(A) administration functions, including budgeting, payroll, human resources, elections, and services provided in support of the board of trustees;

(B) custodial services;

(C) instructional services and support, including remote instruction, selection of textbooks, library and media services, and curriculum development and implementation;

(D) K-12 career and vocational/technical education and work-based learning;

(E) school food services;

(F) software licensing and other information technology;

(G) extracurricular activities;

(H) special education programs; and

(I) transportation for instruction and school activities.

(6) Nothing in this section may be construed to prohibit a district that has entered into a countywide multidistrict agreement from entering into any other multidistrict agreement otherwise meeting the requirements of this section other than subsection (5). Districts participating in a countywide multidistrict agreement from one county may also cooperate with districts from any other county to form multicounty regional multidistrict agreements.

(7) As used in this title, "multidistrict cooperative" means a public entity created by two or more school districts executing a multidistrict agreement under this section with each other or with any other public or private entity participating in the cooperative and complying with the requirements of this section and other laws governing public schools in the state.

History: En. Sec. 21, Ch. 462, L. 2005; amd. Sec. 2, Ch. 418, L. 2011; amd. Sec. 1, Ch. 127, L. 2013; amd. Sec. 1, Ch. 329, L. 2013; amd. Sec. 2, Ch. 580, L. 2023; amd. Sec. 1, Ch. 492, L. 2025; amd. Sec. 8, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 492, L. 2025. Amendment effective July 1, 2025.

Name Change — Directions to Code Commissioner: Pursuant to sec. 8, Ch. 739, L. 2025, in this section the Code Commissioner changed "quality educator" to "quality educator and qualified staff".

20-3-364 and 20-3-365 reserved.

20-3-366. Qualifying district health insurance trusts — qualifications — definitions — rulemaking. (1) The first district health insurance trust that is qualified by the state auditor under this section must be provided the insurance trust incentive payment under 20-3-369 to stabilize health insurance costs and capitalize an operating reserve for the school district members of the trust. The state auditor may qualify only the first district health insurance trust meeting the criteria of this section.

(2) A district health insurance trust seeking qualification from the state auditor under subsection (3) shall apply to the state auditor demonstrating that the district health insurance trust:

(a) has been created on or after July 1, 2023, by a multidistrict agreement pursuant to 20-3-363 or by an interlocal cooperative agreement among participating school districts pursuant to the provisions of Title 20, chapter 9, part 7. The terms of the agreement must include the state auditor or the auditor's designee as an ex officio nonvoting member of the trust's governing board.

(b) has a binding contractual agreement among at least 150 districts employing a minimum of 12,000 employees to participate in and obtain health insurance for its employees through the trust. The calculation of these thresholds may include:

(i) only the number of employees that are contracted to participate in and obtain health insurance through the trust by each participating district; and

(ii) school districts and their employees with current renewal cycles other than a school fiscal year provided that the districts and employees are purchasing insurance through the trust not later than the earlier of the day after the date of the expiration of their previous policy or January 1 in the first year of the trust's operation.

(c) equally allocates the shared risk of assessments among all members of the trust;

(d) determines plan design, contribution rates, and a contribution tier structure in consultation with a certified actuary;

(e) has adopted a required limit on administrative costs of not more than 12% of total costs in the formative documents of the trust. An initial commitment included in the application for qualification is legally binding on the trust in its operations.

(f) maintains full control over claims data for medical and pharmacy benefits and makes the data available to member districts on request in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq.;

(g) provides, either directly or through a third-party administrator, estimates of costs for employees' anticipated medical treatments and procedures and estimates of required cost sharing by members;

(h) has formed as an agreement between school districts undertaken to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan as described in and subject to 33-1-102(9);

(i) prohibits any preexisting health benefits trust or district from imposing its liabilities on the trust that were incurred prior to joining the trust; and

(j) adopts contribution rates as recommended by its contracted actuary to pay all claims and maintain plan reserves at or above minimum levels of risk-based capital recommended by its actuary. The trust shall prepare and submit to the state auditor a report of its financials in a form and containing information as required by the state auditor by rule.

(3) Nothing in this section may be construed to require a district to obtain insurance through the trust in whole or in part. A district may provide insurance through the trust for some groups and through other means for other groups, provided that at least 12,000 employees must be covered under the trust to qualify for the incentives under 20-3-369. Any group of a district obtaining insurance through the trust is subject to the same requirements applicable to districts regarding the minimum duration of participation, conditions for withdrawal, and delay of return to the trust under 20-3-367.

(4) A district health insurance trust qualified by the state auditor may, at its option, contract services with a third-party administrator for services needed by the trust, including but not limited to enrollment, claims processing, wellness plans, and access to financial arrangements with providers through provider network agreements via a contract.

(5) The state auditor shall adopt rules necessary to implement 20-3-366 through 20-3-370. The rules must address minimum reserves and reporting requirements for the trust. The state auditor may order the dissolution of the trust if the trust fails to comply with the provisions of 20-3-366 through 20-3-370 or the rules adopted by the state auditor.

(6) For the purposes of 20-3-366 through 20-3-370, the following definitions apply:

(a) "Administrative costs" means the overall costs of operating a district health insurance trust except for:

(i) the cost of providing health care to members, including wellness plans to improve and promote health and fitness;

(ii) additions to reserves as recommended by the district health insurance trust's actuary under subsection (2); and

(iii) the cost of excess insurance or reinsurance for high-cost claims within the trust with plan design and deductible levels as recommended by the trust's actuary.

(b) "District" means a public school district as provided in 20-6-101 and 20-6-701 and any cooperative formed pursuant to 20-7-451 through 20-7-457.

(c) "District health insurance trust" or "trust" means an arrangement, plan, interlocal agreement, or multidistrict agreement complying with the requirements of this section that jointly provides disability insurance as defined in 33-1-207 to the officers, elected officials, or employees of districts through a member-governed, self-funded program.

(d) "Employee" means an individual employed by a district in any capacity, including but not limited to an employee meeting the definition in 2-18-601 and a teacher or principal as defined in 20-1-101 who is regularly scheduled to work at least 20 hours or more a week during the academic year.

(e) "Member" means any employee and the employee's qualified dependents who are obtaining health insurance coverage under the trust by virtue of their status as a dependent of the employee.

History: **En. Sec. 1, Ch. 770, L. 2023.**

20-3-367. District withdrawal — procedures. (1) Except as provided in subsection (2), a district or an employee group of a district that voluntarily joins the trust must participate in the trust for at least 5 consecutive school fiscal years before becoming eligible to withdraw from the trust. To complete its withdrawal effective not earlier than the completion of at least 5 consecutive school fiscal years, the district shall notify the trust prior to withdrawing from participation pursuant to the contractual terms of coverage and membership in the district health insurance trust.

(2) (a) On or before January 1 of each plan year beginning after the second full year of providing health benefits to the members of the trust, the trust shall prepare a report for each of its participating districts and employee groups that includes the following:

(i) a per-member cost for the immediately preceding plan year calculated by dividing the total cost to the trust of providing member benefits to the district or employee group by the total number of members in the district or employee group for the applicable year. This calculation is referred to as the "cost rate" in this section.

(ii) a calculation of what the per-member contribution rates would be for the district or employee group for the current plan year using the same number of members in each of the plans offered by the trust in the immediately preceding plan year. This calculation is referred to as "the contribution rate" in this section.

(iii) a percentage rounded to the nearest tenth, calculated by dividing the contribution rate calculated as provided in subsection (2)(a)(ii) by the cost rate calculated as provided in subsection (2)(a)(i), subtracting 1, and multiplying by 100 to produce a percentage. This calculation is referred to as "the adjusted contribution inflation rate" in this section.

(iv) the annual inflation rate for medical care derived from the medical care index of the United States bureau of labor statistics for July 1 of the current plan year, converted to a percentage. This rate is referred to as "the medical care index rate" in this section.

(v) a computation and the resulting number rounded to the nearest tenth that is yielded from dividing the adjusted contribution inflation rate of the district or employee group by the medical care index rate. The resulting number is referred to as "the inflation gap factor" for the district or employee group in this section.

(b) A district or an employee group with an inflation gap factor equal to or greater than 1.5 may withdraw from the trust upon the conclusion of the plan year in which the trust reports an inflation gap factor to the district or employee group above 1.5. To complete its withdrawal, the district shall notify the trust prior to withdrawing from participation pursuant to the contractual terms of coverage and membership in the district health insurance trust.

(3) A district that has withdrawn from a district health insurance trust under subsections (1) or (2):

(a) is ineligible to rejoin the trust for at least 5 full school fiscal years following the year in which the district withdraws;

(b) is ineligible for receipt of any portion of the net assets or reserve balance of the trust attributable to the distribution of funds under 20-3-369(3) on withdrawal. The portion of the net assets and reserve balance attributable to the distribution of state funds referenced under this subsection (3) must be determined by an actuarial reserve balance analysis conducted by the trust's contracted actuary; and

(c) shall reimburse the trust for the run-off liability of the withdrawing district or employee group, consisting of all claims of the withdrawing district or employee group that were incurred by the members of the district or employee group prior to the effective date of the district's or employee group's withdrawal.

History: En. Sec. 2, Ch. 770, L. 2023.

20-3-368. Dissolution — disqualification. (1) If, after being qualified by the state auditor, a district health insurance trust ceases to comply with the conditions under 20-3-366(1) for more than 3 consecutive years, the trust shall immediately notify the state auditor and dissolve the trust no later than the end of the next full fiscal year after the date of notification. A district health insurance trust may also voluntarily dissolve.

(2) When dissolving pursuant to this section, the district health insurance trust shall wind up the affairs of the trust in the following order:

(a) impose any assessments on the districts of the trust that are calculated by the trust's retained actuary as necessary to pay all liabilities of the trust;

(b) pay all remaining claims, including incurred but not reported claims;

(c) pay all remaining liabilities of the trust;

(d) return any reserve balance remaining from the distribution of state funds to the trust under 20-3-369(3) to the state of Montana, after adjustments under subsections (2)(a) through (2)(c), for deposit in the state general fund. The portion of the reserve balance attributable to the distribution of state funds referenced under this subsection (2)(d) must be determined by an actuarial reserve balance analysis conducted by an actuary chosen by the state auditor.

(e) distribute its remaining net assets, if any, proportionately to the districts of the trust pursuant to the contractual terms of coverage and membership in the trust. A district shall deposit funds distributed under this subsection (2)(e) in an internal service account and spend the funds in accordance with 20-3-330 or 20-3-331.

History: En. Sec. 3, Ch. 770, L. 2023.

20-3-369. State school health trust operating reserve account — distribution and uses. (1) There is a state school health trust operating reserve account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide a one-time-only distribution of incentive funding to the first self-funded district health insurance trust that is qualified by the state auditor pursuant to 20-3-366.

(2) The state school health trust operating reserve account is statutorily appropriated, as provided in 17-7-502, to the office of public instruction for distribution as provided in this section.

(3) If a trust has been qualified by the state auditor on or before June 30, 2026, for initial operation beginning July 1, 2026, the superintendent shall, on July 1, 2026, or on qualification by the state auditor, distribute $40 million to the district health insurance trust. The qualifying district health insurance trust shall use the funds to stabilize health insurance costs through capitalization of an operating reserve for the district members of the trust.

(4) If a trust has not been qualified by June 30, 2026, the account balance must be transferred to the capital developments long-range building program account for uses consistent with 17-7-209.

History: En. Sec. 4, Ch. 770, L. 2023; amd. Sec. 2, Ch. 8, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 8, L. 2025. Amendment effective October 1, 2025.

20-3-370. Repayment of initial reserve from state from excess reserves. (1) Beginning July 1, 2036, a trust created under 20-3-366, shall, as part of its annual actuarial analysis, identify and report to the state auditor no later than 90 days following the completion of its annual audit, any excess reserves existing in the trust.

(2) The trust shall remit to the state any excess reserves identified pursuant to subsection (1) until the cumulative amounts remitted reaches $40 million. The state shall deposit any amounts remitted from year to year in the capital developments long-range building program account for uses consistent with 17-7-209.

(3) For the purposes of 20-3-366 through 20-3-370, "excess reserves" means reserves in excess of the greater of:

(a) reserve levels required under rules adopted by the state auditor;

(b) minimum risk-based capital recommended by the trust's actuary, using a confidence interval of 90%; or

(c) minimum capital calculated by the trust's actuary following the risk-based capital requirements applicable to a health organization that are specified in Title 33, chapter 2, part 19, at levels above the levels that would trigger a company action level event for a health organization under 33-2-1904.

History: En. Sec. 5, Ch. 770, L. 2023.

CHAPTER 4

TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

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Chapter Cross-References

Teachers' retirement system, Title 19, ch. 20.

Part 1
Certification of Teaching and Supervisory Personnel

20-4-101. System and definitions of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification must be established and maintained under the provisions of this title and a person may not be permitted to teach in the public schools of the state until the person has obtained a teacher or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The certification requirement does not apply to:

(a) a student teacher who is a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by the institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher; or

(b) an instructor employed by the Montana university system or an accredited institution of equal rank and standing as that of any unit of the Montana university system when teaching any advanced course offered to pupils as defined in 20-1-101 for college credit, including courses provided pursuant to 20-3-324(28).

(4) An individual to whom the certification requirement does not apply under subsection (3) must be accorded the same protection of the laws as that accorded a certificated teacher and shall, while performing functions authorized under subsection (3), comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979; amd. Sec. 2, Ch. 227, L. 1987; amd. Sec. 286, Ch. 56, L. 2009; amd. Sec. 3, Ch. 247, L. 2021.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Health education course, including drug and alcohol abuse instruction, Title 20, ch. 25, part 6.

20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.
Duty to certify special education teachers, 20-7-403.

20-4-104. Qualifications. (1) A person may be certified as a teacher when the person satisfies the following qualifications. The person:

(a) is 18 years of age or older;

(b) is of good moral and professional character and has completed a fingerprint-based national criminal history background check pursuant to the educator licensure policies of the board of public education;

(c) (i) has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and the training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d);

(ii) possesses a current certification from the national board for professional teaching standards;

(iii) possesses a current educator license from another state or country and successful experience as determined by the board of public education; or

(iv) has completed the alternative teacher certification and endorsement program provided for in 20-4-120; and

(d) has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when the person satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2).

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979; amd. Sec. 1, Ch. 165, L. 1981; amd. Sec. 1, Ch. 266, L. 1983; amd. Sec. 1, Ch. 257, L. 1991; amd. Sec. 287, Ch. 56, L. 2009; amd. Sec. 4, Ch. 247, L. 2021; amd. Sec. 2, Ch. 470, L. 2023; amd. Sec. 3, Ch. 716, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 716, L. 2025. Amendment effective July 1, 2025.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.
Oaths, Title 1, ch. 6, part 1.

20-4-105. Repealed. Sec. 2, Ch. 165, L. 1981.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program that includes a bachelor's degree and a minimum of 1 year of study beyond the degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher or specialist certificate in the school or schools in which the applicant would be an administrator or would supervise. The applicant must also possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor. An applicant for a class 3 administrative and supervisory certificate who is currently licensed in another state at a comparable level of licensure essentially equivalent to the class 3 administrative and supervisory certificate is eligible for licensure with verification of successful administrative experience as provided by the policies of the board of public education.

(d) (i) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(ii) (A) A class 4C license must be issued to individuals who hold at least a high school diploma or high school equivalency diploma and have completed a minimum of 10,000 hours of documented, relevant work experience, which may include apprenticeship training, documenting the knowledge and skills required in the specific trade in which they are to teach. Acceptable documentation of relevant work experience is determined by the superintendent of public instruction consistent with rules of the board of public education.

(B) Trades in which a class 4C licensed individual can teach include agriculture business, marketing, and communications, agriculture mechanics, auto body, automotive technology, aviation, building maintenance, building trades, computer information systems, culinary arts, diesel mechanics, drafting, electronics, engineering, graphic arts, health occupations education, heavy equipment operator, horticulture, industrial mechanics, livestock production, machining, metals, plant and soil sciences, ROTC, small engines, power equipment technology, traffic education, theatre arts, videography, welding, and any other trade approved by the superintendent of public instruction.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of the intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms that are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: **En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979; amd. Sec. 1, Ch. 175, L. 1983; amd. Sec. 288, Ch. 56, L. 2009; amd. Sec. 5, Ch. 247, L. 2021.**

Cross-References

Duty of Board of Public Education to adopt certification policies, 20-2-121.

Duty of Superintendent of Public Instruction to certify special education teachers, 20-7-403.

20-4-107. Outstanding teacher certificates. (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

History: En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

20-4-108. Term of teacher and specialist certificates — renewal. (1) A teacher or specialist certificate issued by the superintendent of public instruction must bear the dates of issue and validity and is valid for a term of 5 school fiscal years, except that a class 5 provisional certificate is valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate begins on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after January 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates must be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979; amd. Sec. 1, Ch. 224, L. 1983; amd. Sec. 1, Ch. 58, L. 1995.

20-4-109. Fees for teacher and specialist certificates. (1) (a) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used for fully funding the costs of administering the teacher and specialist licensure program at the office of public instruction, including operations and maintenance of the licensure system and personnel costs.

(b) The superintendent of public instruction shall recommend to the board of public education annual and filing fee amounts sufficient to generate the revenue required to administer the teacher and specialist licensure program. In recommending the fees, the superintendent shall consider the revenues and expenses incurred in the prior 5 licensing renewal years, but the cash balance of the account in subsection (2) may not exceed two times the account's annual appropriation level. The recommendation must include documentation sufficient to support the fees charged to support the licensure program. The board of public education shall set the annual and filing fee amounts based on the superintendent's recommendation.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account and used for administering the teacher and specialist licensure program at the office of public instruction.

History: En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979; amd. Sec. 5, Ch. 465, L. 1987; amd. Sec. 1, Ch. 103, L. 1989; amd. Sec. 4, Ch. 628, L. 1989; amd. Sec. 2, Ch. 495, L. 1991; amd. Sec. 26, Ch. 509, L. 1995; amd. Sec. 1, Ch. 165, L. 1999; amd. Sec. 1, Ch. 173, L. 2003; amd. Sec. 1, Ch. 721, L. 2023.

20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate. (1) The board of public education may issue a letter of reprimand or may suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons:

(a) making any statement of material fact in applying for a certificate that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, administrator, or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher, administrator, or specialist employed by that school or school district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, administrator, or specialist is terminated or not renewed or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal because the trustees have reason to believe that the teacher, administrator, or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, nonrenewal, or resignation.

(b) The superintendent shall review the report and any supporting evidence included in the report and may conduct further investigation. If the superintendent is satisfied that sufficient grounds exist, the superintendent may request action by the board of public education under subsection (1). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider a letter of reprimand or the suspension or revocation of a certificate. Service of the notice must be accomplished by sending the notification by registered mail to the last address that the person has provided to the school district or the superintendent of public instruction.

(5) The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity for defense against the charge.

(6) After a hearing, the board may place a written reprimand in the person's certification file or may suspend or revoke the person's teacher, administrator, or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate. The board may, upon a request by a school district, inform the school district that a person's certification file includes a letter of reprimand, but the board may not provide a copy of the letter without first determining that the public's right to know outweighs the person's right to privacy.

(7) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board is final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979; amd. Sec. 1, Ch. 227, L. 1987; amd. Sec. 1, Ch. 382, L. 1993; amd. Sec. 1, Ch. 486, L. 1995.

Cross-References
False swearing, 45-7-202.
Unsworn falsification to authorities, 45-7-203.

20-4-111. Emergency authorization of employment. (1) A district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid Montana teacher or specialist certificate and a required endorsement as an instructor of pupils when the district cannot secure the services of a person holding a valid Montana certificate and a required endorsement. The person must have previously held a valid teacher or specialist certificate from Montana or another state or shall provide acceptable evidence of academic qualifications or significant experience related to the area for which the emergency authorization of employment is being sought as prescribed by the policies of the board of public education for and during an emergency. Emergency authorization of employment must indicate:

(a) the district to which the authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ the person is given; and

(d) the school fiscal year for which the emergency authorization of employment is given.

(2) Emergency authorization of employment of a person is valid for the school fiscal year identified on the authorization and may be renewed in accordance with the board of public education policies. A fee not to exceed $6 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for the person, a filing fee of $6 must be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979; amd. Sec. 26, Ch. 83, L. 1989; amd. Sec. 2, Ch. 103, L. 1989; amd. Sec. 3, Ch. 495, L. 1991; amd. Sec. 6, Ch. 247, L. 2021.

20-4-112. Access to materials — superintendent of public instruction. The superintendent of public instruction has access to all material considered by or available to the school or school district that may be relevant to an allegation that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) or that may lead to the discovery of relevant evidence.

History: En. Sec. 2, Ch. 382, L. 1993.

20-4-113. Access to criminal justice information. (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

History: En. Sec. 3, Ch. 382, L. 1993.

20-4-114. Penalty for failure to report. The failure of a school trustee to report as required in 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

History: En. Sec. 4, Ch. 382, L. 1993.

20-4-115 through 20-4-119 reserved.

20-4-120. Alternative teacher credentialing. (1) The superintendent of public instruction shall issue a class 2 standard certificate to an applicant who meets all of the following requirements:

(a) the applicant holds a bachelor's degree from an accredited college or university;

(b) the applicant passes a criminal history background check in the manner prescribed under rules adopted by the board of public education;

(c) the applicant completes coursework related to Indian education for all, pursuant to Title 20, chapter 1, part 5, that is required of other class 2 standard certificate applicants under rules adopted by the board of public education; and

(d) the applicant has successfully completed an alternative teacher certification and endorsement program that includes the following:

(i) subject-area content training in the area in which the applicant seeks to be certified and endorsed; and

(ii) pedagogical training that covers effective instructional delivery, classroom management and organization, assessment, instructional design, and professional learning and leadership.

(2) An individual who successfully completes an alternative teacher certification and endorsement program and who is granted a class 2 standard certificate under this section:

(a) is authorized to teach the subjects and grade levels corresponding with the individual's completed alternative teacher certification and endorsement program; and

(b) may be required by the board of public education to participate in a district mentorship and induction program in the first year of full-time employment.

(3) The state shall treat an individual who successfully earns a class 2 standard certificate under this section in the same manner as an individual who completes a traditional teacher preparation program and is issued a class 2 standard certificate, including following the same process for certifications under 20-4-106 that require a class 2 standard certificate as a prerequisite to other certifications.

(4) For purposes of this part, the following definitions apply:

(a) "Alternative teacher certification and endorsement program" means a teacher certification and endorsement program that meets the requirements of this section, and has been approved by the board of public education upon recommendation of the superintendent of public instruction. The approval of an alternative teacher certification and endorsement program may not require a supervised teaching experience or licensure from another state or any characteristic except as provided in this section and must require either:

(i) affiliation with or status as a public or private institution of higher education; or

(ii) that the alternative teacher certification and endorsement program is accepted for teacher licensure in at least five states and has operated for at least 10 years.

(b) "Certification and endorsement" means the classifications of teacher and specialist certificates and the corresponding subject fields for endorsement according to the board of education policy for certification endorsement as referenced in 20-4-106.

History: **En. Sec. 1, Ch. 470, L. 2023.**

20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational personnel.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of the official's state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of the designated state official's state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which the designated state official finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in the designated state official's own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012; amd. Sec. 289, Ch. 56, L. 2009.

20-4-122. Designated official for purposes of interstate agreement. The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.

20-4-123. Preservation and publication of contracts made pursuant to interstate agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.

20-4-124 through 20-4-126 reserved.

20-4-127. Certification reciprocity for military members, military spouses, and veterans — requirements. (1) The superintendent of public instruction shall issue a teacher certificate and endorsement or specialist certificate as provided by Title 20 to a person:

(a) who is certified and endorsed in good standing in another state or a United States territory as a teacher or specialist; and

(b) (i) who is a member of the armed forces of the United States or whose spouse is a member of the armed forces of the United States;

(ii) who is subject to military orders for a change of station to a duty station in this state, who is in the process of a change of station to a duty station in this state, who has been honorably discharged and is relocated to this state, or whose spouse is the subject of a military transfer to this state;

(iii) who is the spouse of a military member, and the spouse left employment to accompany the military member to this state; or

(iv) who is the dependent of an active-duty member of the United State armed forces who has been transferred to Montana, is scheduled to be transferred to Montana, is domiciled in Montana, or has moved to Montana on a permanent change-of-station basis.

(2) In issuing a certificate and endorsement under subsection (1), the superintendent of public instruction may:

(a) issue the person a certificate and endorsement if the superintendent of public instruction determines the requirements for certification and endorsement in the other state are substantially equivalent to the requirements in this state; or

(b) if the requirements for certification and endorsement are not substantially equivalent, issue the person a temporary teacher certificate and endorsement or specialist certificate to authorize the person as a teacher or specialist while completing any specific requirements by the office of public instruction.

(3) The provisions of subsection (1) do not apply to a person whose teacher certificate or specialist certificate is not in good standing with another state or who is subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

History: En. Sec. 2, Ch. 390, L. 2023.

20-4-128 through 20-4-130 reserved.

20-4-131. Repealed. Sec. 2, Ch. 370, L. 2023.

History: En. Sec. 1, Ch. 465, L. 1987; amd. Sec. 2, Ch. 124, L. 1991.

20-4-132. Repealed. Sec. 2, Ch. 370, L. 2023.

History: En. Sec. 3, Ch. 465, L. 1987; amd. Sec. 290, Ch. 56, L. 2009.

20-4-133. Repealed. Sec. 2, Ch. 370, L. 2023.

History: En. Sec. 4, Ch. 465, L. 1987; amd. Sec. 27, Ch. 83, L. 1989.

20-4-134. Professional stipends for teachers certified by national board for professional teaching standards. (1) Pursuant to subsection (5), an annual stipend of up to an amount equivalent to 50% of the quality educator and qualified staff payment amount provided in 20-9-306 for the applicable year must be provided to each teacher who holds a current certificate from the national board for professional teaching standards if the teacher is:

(a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;

(b) certified to teach in Montana under the provisions of 20-4-103; and

(c) a full-time employee of:

(i) a Montana public school district, as defined in 20-6-101;

(ii) an education cooperative, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; or

(iv) a correctional facility, as defined in 41-5-103.

(2) An annual stipend of up to an amount equivalent to 85% of the quality educator and qualified staff payment amount provided in 20-9-306 for the applicable year must be provided to each teacher who meets the criteria for the stipend in subsection (1) and who has an instructional assignment in a school identified as:

(a) a school in a high-poverty area eligible to participate in the community eligibility provision under Public Law 111-296; or

(b) an impacted school as defined in 20-4-502.

(3) A teacher becomes eligible for the stipend in subsection (1) in the school year beginning July 1 after the teacher obtains certification or recertification from the national board for professional teaching standards.

(4) By March 1, the superintendent of public instruction shall distribute stipend payments to any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher.

(5) The obligation for funding a portion of the professional stipends is an obligation of the state. This section may not be construed to require a school district to provide its matching portion of a stipend to a qualifying teacher without a payment from the state to the district. If the money appropriated for the stipends is not enough to provide the full amount for each eligible teacher, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the stipends.

(6) (a) For a stipend under subsection (1), the state shall pay 50% of the maximum stipend amount under subsection (1) and another 1% of the amount for each 1% of the amount contributed by the teacher's school district, up to a maximum state contribution of 75% of the amount.

(b) For a stipend under subsection (2), the state shall pay 55% of the maximum stipend amount under subsection (2) and another 2% of the amount for each 1% of the amount contributed by the teacher's school district, up to a maximum state contribution of 85% of the amount.

History: En. Sec. 1, Ch. 555, L. 2001; amd. Sec. 2, Ch. 150, L. 2017; amd. Sec. 2, Ch. 347, L. 2019; amd. Sec. 2, Ch. 339, L. 2021; amd. Sec. 1, Ch. 124, L. 2025; amd. Sec. 8, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 124, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 3, Ch. 124, L. 2025, provided: "[This act] applies to stipends paid for school years beginning on or after July 1, 2025."

Name Change — Directions to Code Commissioner: Pursuant to sec. 8, Ch. 739, L. 2025, in this section the Code Commissioner changed "quality educator" to "quality educator and qualified staff".

Part 2
Teacher Employment — Tenure

20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies the person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist must be employed under written contract, and each contract of employment must be authorized by a proper resolution of the trustees and must be executed in duplicate by the presiding officer of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) A contract of employment with a teacher or specialist may not require the teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. A deduction may not be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. A teacher's or specialist's contract made in conflict with the 5-days-a-week provision of this section is not enforceable against the teacher or specialist.

(3) Whenever the boards of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361 or when the boards of trustees of two or more school districts enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a teacher or specialist, the joint board of trustees or the boards of trustees of two or more school districts, pursuant to an interlocal agreement, may execute a contract of employment with a teacher or specialist who shall serve the districts. When a contract is executed, the districts shall prorate the compensation provided by the contract on the basis of the total number of instructional hours expended by the teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to the oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979; amd. Sec. 3, Ch. 308, L. 1987; amd. Sec. 3, Ch. 318, L. 2001.

Cross-References

Discrimination on account of religious ideas prohibited, Art. II, sec. 4, Mont. Const.
Oaths, Title 1, ch. 6.
Nepotism, Title 2, ch. 2, part 3.
Indian hiring preference within reservations, 2-18-111.
Leave of absence of public employees attending training camp, 10-1-1009.
Reemployment of veterans, Title 10, ch. 2, part 2.
Powers of joint board of trustees, 20-3-362.
Veterans' employment preference, Title 39, ch. 29.
Handicapped persons' public employment preference — not applicable to schools, 39-30-103.

20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register the person's certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county in which the person is employed in order to validate the person's employment status and permit payment under the employment contract. If a teacher or specialist does not register the person's certificate with the county superintendent within 60 calendar days after the person begins to perform services, the person is not eligible to receive any further compensation under the contract of employment until the person has registered the certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered a current valid certificate, and the district may not pay any teacher who has not registered the person's certificate until the county superintendent does notify the district of the registration.

(2) A teacher or specialist employed by a joint district shall register the person's certificate with the county superintendent of the county in which the person is working. A teacher or specialist employed by a special education cooperative shall register the person's certificate with the county superintendent of the county in which the special education cooperative is based.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987; amd. Sec. 291, Ch. 56, L. 2009.

Cross-References

Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

20-4-203. Teacher tenure. (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year as a tenured teacher at the same salary and in the same or a comparable position of employment as that provided by the last-executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

(3) (a) For the purposes of subsection (1), "same salary" means the daily rate of pay, excluding benefits and excluding stipends for nonteaching duties, multiplied by the number of days worked under the last-executed contract with the teacher, up to the total number of days funded by the state in the per-ANB entitlements, as provided in 20-9-311, including pupil-instruction-related days. The calculation of daily rate of pay is determined by dividing the salary in the last-executed contract with the teacher for pupil-instruction and pupil-instruction-related days, excluding benefits and excluding stipends for nonteaching duties, by the total number of contracted days under the last-executed contract.

(b) The definition of same salary may be modified if negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31, or in an individual contract between the district and a teacher in a district in which the teachers have no exclusive representative as provided in Title 39, chapter 31.

(4) Upon receiving tenure, the employment of a teacher may be terminated for good cause.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983; amd. Sec. 1, Ch. 479, L. 1989; amd. Sec. 1, Ch. 204, L. 1991; amd. Sec. 1, Ch. 259, L. 1997; amd. Sec. 2, Ch. 438, L. 1997.

Cross-References

Tenure of teachers employed by cooperatives, 20-7-456.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator agreed upon by the district and the teacher's exclusive representative. If the exclusive representative has declined to represent the teacher, the teacher or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

(6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent.

(7) In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a request for arbitration must be made

within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.

(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

(9) An arbitrator may order a school district to reinstate a teacher who has been terminated without good cause and to provide compensation, with interest, to a teacher for lost wages and fringe benefits from the date of termination to the date that the teacher is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.

(10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.

(11) Upon submission of the termination decision to an arbitrator, the teacher or the teacher's exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

(12) As used in this section, the following definitions apply:

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on form W-2 and includes any compensation deferred at the option of the employee.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104; amd. Sec. 2, Ch. 521, L. 1983; amd. Sec. 1, Ch. 56, L. 1985; amd. Sec. 1, Ch. 510, L. 1987; amd. Sec. 3, Ch. 438, L. 1997.

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.
Authority of County Superintendent to hear controversy appeals, 20-3-210.
Dismissal of teachers by cooperative, 20-7-456.

20-4-205. Notification of teacher reelection — acceptance. (1) The trustees shall provide written notice by June 1 to all teachers who have been reelected. Any teacher who does not receive notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) Any teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of the reelection within 20 days after the receipt of the notice of reelection, and failure to notify the trustees within 20 days constitutes conclusive evidence of the teacher's nonacceptance of the tendered position.

History: En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105; amd. Sec. 1, Ch. 574, L. 1989; amd. Sec. 4, Ch. 438, L. 1997.

20-4-206. Notification of nontenure teacher reelection — acceptance — termination. (1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

(3) Subject only to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.

(4) As used in 20-4-209 and this section, "without cause" includes financial reasons.

History: **En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1; amd. Sec. 2, Ch. 510, L. 1987; amd. Sec. 2, Ch. 439, L. 1991; amd. Sec. 5, Ch. 438, L. 1997; amd. Sec. 2, Ch. 697, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 697, L. 2025. Amendment effective July 1, 2025.

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of the teacher's employment contract for good cause.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state clearly and explicitly the specific reason or reasons that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 10 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 20 days appeal the dismissal under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a teacher shall appeal a decision to terminate an employment contract to an arbitrator.

History: **En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107; amd. Sec. 2, Ch. 56, L. 1985; amd. Sec. 1, Ch. 28, L. 1989; amd. Sec. 6, Ch. 438, L. 1997; amd. Sec. 5, Ch. 514, L. 1999.**

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.
Authority of County Superintendent to hear controversy appeals, 20-3-210.
Authority of trustees to employ and dismiss teachers, 20-3-324.
Dismissal of teachers by cooperative, 20-7-456.

20-4-208. Transfer from administrative position. (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the district reduces the size of its administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent.

(4) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which the tenure teacher is endorsed that becomes available in the district.

History: En. Sec. 2, Ch. 204, L. 1991; amd. Sec. 1, Ch. 114, L. 1993; amd. Sec. 7, Ch. 438, L. 1997.

20-4-209. Notice of nonrenewal of nontenure teacher for financial reasons — notice and opportunity for comment required. (1) When a district administrator proposes to nonrenew a nontenure teacher for financial reasons, the trustees shall include the proposed nonrenewal for financial reasons on the agenda of a meeting on or before June 1.

(2) A proposed nonrenewal of a nontenure teacher under subsection (1) is an action of significant interest to the public within the meaning of 2-3-103.

(3) A nonrenewal of a nontenure teacher for financial reasons is a nonrenewal without cause as provided in 20-4-206.

(4) The provisions of this section do not override provisions negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31.

History: En. Sec. 1, Ch. 697, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 697, L. 2025, provided: "[This act] is effective July 1, 2025."

20-4-210 reserved.

20-4-211. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.

20-4-212. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.

20-4-213. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

20-4-214. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

Part 3
Teachers' Powers, Duties, and Privileges

20-4-301. Duties of teacher — nonpayment for failure to comply. (1) A teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and policies of the trustees of the district;

(b) use the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register of attendance and grades;

(d) within 10 days after the conclusion of each school semester, prepare a report that must include the pupil attendance and absence data from the teacher's register and grades. The report must be submitted to:

(i) the district superintendent, if there is one;

(ii) the principal of the school, if there is one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal.

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism, including any curriculum related to the flag prescribed by the trustees;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees are authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any teacher the teacher's last month's salary until the teacher has provided a complete and accurate semester report to the required person, as determined by the person and as required in subsection (1)(d).

History: **En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108; amd. Sec. 1, Ch. 337, L. 1989; amd. Sec. 7, Ch. 22, L. 1997; amd. Sec. 2, Ch. 320, L. 1997.**

Cross-References

ANB defined, 20-1-101.
Abused or neglected child — duty to report, 41-3-201.

20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense. (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

(5) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

(6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, the trustees, or the county superintendent, whichever is applicable.

(7) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than $25 or more than $500.

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact.

History: **En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981; amd. Sec. 1, Ch. 325, L. 1991.**

Cross-References

Duties of pupils — sanctions, 20-5-201.
Suspension and expulsion of pupil, 20-5-202.
Confidential communications by student to teacher in educational institution, 26-1-809.
Use of force by parent, guardian, or teacher, 45-3-107.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than $25 or more than $500.

History: **En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.**

20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training that may be prescribed by the trustees without loss of salary. If a teacher does not attend, the teacher may not be paid.

History: En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111; amd. Sec. 2, Ch. 638, L. 1989; amd. Sec. 292, Ch. 56, L. 2009.

Cross-References

Traveling expenses of officers attending meetings, 20-1-211.

Pupil-instruction-related days, 20-1-304.

Part 4
District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3), and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3) shall employ and appoint a district superintendent, except that the trustees of a county high school district may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.

(4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

(5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall

discharge the person as the district superintendent or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.

(7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112; amd. Sec. 4, Ch. 308, L. 1987; amd. Sec. 28, Ch. 83, L. 1989; amd. Sec. 4, Ch. 318, L. 2001; amd. Sec. 1, Ch. 144, L. 2009.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
Powers of joint board of trustees, 20-3-362.

20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, the executive officer shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit the selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause a pupil of the district;

(7) report the pupil attendance, absence, and enrollment of the district and other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district; and

(8) perform other duties in connection with the district as the trustees may prescribe.

History: En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981; amd. Sec. 2, Ch. 337, L. 1989; amd. Sec. 3, Ch. 343, L. 1999.

Cross-References

Powers and duties of trustees, 20-3-324.
Attendance, Title 20, ch. 5, part 1.
Suspension and expulsion, Title 20, ch. 5, part 2.

20-4-403. Powers and duties of principal. (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

History: En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

Part 5
Quality Educator Loan Assistance Program

20-4-501. Quality educator loan assistance program — purpose. (1) There is a quality educator loan assistance program administered by the superintendent of public instruction. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the superintendent of public instruction in accordance with this part.

(2) The purpose of this program is to aid quality educator recruitment and retention for those schools most impacted by critical quality educator shortages. The program must be implemented in a manner that maximizes recruitment and retention assistance to impacted schools.

History: **En. Sec. 1, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 85, L. 2017; amd. Sec. 3, Ch. 347, L. 2019.**

20-4-502. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) "Impacted school" means:

(a) a special education cooperative;

(b) the Montana school for the deaf and blind, as described in 20-8-101;

(c) the Montana youth challenge program, as established in 10-1-1401;

(d) a correctional facility, as defined in 41-5-103;

(e) a public school located on an Indian reservation; and

(f) a public school that, driving at a reasonable speed for the road surface, is located more than 20 minutes from a Montana city with a population greater than 15,000 based on the most recent federal decennial census.

(5) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the current school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (5)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education;

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-24-301, 37-25-309, 37-39-308, 37-39-309, or 37-39-311 and is employed by an entity listed in subsection (5)(b) to provide services to students; or

(iii) is employed by an entity listed in subsection (5)(b) to provide educational sign language interpreting for deaf and hard-of-hearing students and who meets the qualifications for educational sign language interpreting established by the board of public education.

(b) For the purposes of subsection (5)(a), "an entity" means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a correctional facility, as defined in 41-5-103.

(6) "School district" means a public school district, as provided in 20-6-101 and 20-6-701.

History: **En. Sec. 2, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 59, L. 2009; amd. Sec. 4, Ch. 347, L. 2019; amd. Sec. 3, Ch. 339, L. 2021; amd. Sec. 1, Ch. 232, L. 2023; amd. Sec. 15, Ch. 713, L. 2023; amd. Sec. 2, Ch. 536, L. 2025; amd. Sec. 1, Ch. 671, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 536, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 671, L. 2025. Amendment effective July 1, 2025.

20-4-503. Critical quality educator shortages — impacted schools. (1) The board of public education, in consultation with the office of public instruction, shall maintain and make publicly available a current list of impacted schools.

(2) A quality educator is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part. If a quality educator is eligible for loan assistance and remains employed in the same impacted school or another impacted school within the same school district, the quality educator remains eligible for a lifetime total of up to 3 years of state-funded loan repayment assistance and an additional 1 year of loan repayment assistance funded by the impacted school or the district under which the impacted school is operated pursuant to 20-4-504(2).

History: **En. Sec. 3, Ch. 1, Sp. L. May 2007; amd. Sec. 2, Ch. 85, L. 2017; amd. Sec. 5, Ch. 347, L. 2019; amd. Sec. 1, Ch. 321, L. 2021; amd. Sec. 48, Ch. 503, L. 2021; amd. Sec. 2, Ch. 232, L. 2023; amd. Sec. 1, Ch. 313, L. 2025.**

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 1, Ch. 313, L. 2025. Amendment effective July 1, 2025.

The amendment to this section made by sec. 2, Ch. 671, L. 2025, was rendered void by sec. 7, Ch. 671, L. 2025, a coordination section.

Applicability: Section 5, Ch. 313, L. 2025, provided: "[This act] applies to applications for loan repayment assistance submitted on or after July 1, 2025."

20-4-504. Loan repayment assistance. (1) Loan repayment assistance may be provided on behalf of a quality educator who:

(a) is newly hired, with priority given to a quality educator newly hired in an impacted school pursuant to 20-4-503; and

(b) has an educational loan that is not in default and that has a minimum unpaid current balance of at least $1,000 at the time of application.

(2) A quality educator is eligible for state-funded loan repayment assistance for a lifetime total of no more than 3 years and an additional 1 year of loan repayment assistance voluntarily funded by the school or the district under which the school is operated, with the maximum annual loan repayment assistance not to exceed:

(a) $3,000 of state-funded loan repayment assistance after the first complete year of teaching;

(b) $4,000 of state-funded loan repayment assistance after the second complete year of teaching in the same school or another school within the same school district;

(c) $5,000 of state-funded loan repayment assistance after the third complete year of teaching in the same school or another school within the same school district; and

(d) up to $5,000 of loan repayment assistance funded by the school or the district under which the school is operated after the fourth complete year of teaching in the same school or another school within the same school district.

(3) If the funding for state-funded loan repayment assistance in any year is less than the total amount for which Montana quality educators qualify, the superintendent of public instruction shall prorate repayment assistance amounts as follows:

(a) The superintendent of public instruction shall prioritize repayment for quality educators working at impacted schools first. If there are funds remaining after allocating amounts to fully fund quality educators working in impacted schools pursuant to subsection (2), the superintendent of public instruction may award the remaining funds to quality educators who are working in schools that are not impacted schools and prorate the remaining funds if necessary. If the appropriated funds are insufficient to fully fund the amounts required for quality educators working in impacted schools, the superintendent of public instruction shall prorate the amounts as provided in subsection (3)(b).

(b) If the repayment assistance amount is insufficient to provide a full award to quality educators working in impacted schools, the superintendent of public instruction shall prorate the repayment assistance amount among only the quality educators working in impacted schools.

History: En. Sec. 4, Ch. 1, Sp. L. May 2007; amd. Sec. 6, Ch. 347, L. 2019; amd. Sec. 3, Ch. 232, L. 2023; amd. Sec. 2, Ch. 313, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 313, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 5, Ch. 313, L. 2025, provided: "[This act] applies to applications for loan repayment assistance submitted on or after July 1, 2025."

20-4-505. Loan repayment assistance documentation. (1) A quality educator shall submit an application for loan repayment assistance to the superintendent of public instruction in accordance with policies and procedures adopted by the superintendent of public instruction. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the superintendent of public instruction that is necessary for verification of the applicant's eligibility.

(2) The superintendent of public instruction may require a quality educator who is eligible for loan repayment assistance to provide documentation that the quality educator has exhausted repayment assistance from other federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) The superintendent of public instruction may remit payment of the loan on behalf of the quality educator in accordance with the requirements of this part and policies and procedures adopted by the superintendent of public instruction.

(4) A school or a school district may remit payment of the loan on behalf of a quality educator eligible for loan repayment assistance under this section in accordance with 20-4-504.

History: En. Sec. 5, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 85, L. 2017; amd. Sec. 7, Ch. 347, L. 2019; amd. Sec. 3, Ch. 313, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 313, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 5, Ch. 313, L. 2025, provided: "[This act] applies to applications for loan repayment assistance submitted on or after July 1, 2025."

20-4-506. Repealed. Sec. 8, Ch. 347, L. 2019.

History: En. Sec. 6, Ch. 1, Sp. L. May 2007; amd. Sec. 4, Ch. 85, L. 2017.

Part 6
Grow Your Own Grant Program

20-4-601. *(Temporary)* **Grow your own grant program — administration.** (1) There is a grow your own grant program administered by the commissioner of higher education. The purpose of the grant program is to develop teacher pipelines aimed at serving rural and reservation school districts.

(2) (a) The grow your own grant program must involve:

(i) the opportunity for students to take dual credit courses in education while in high school;

(ii) the opportunity for students to engage in work-based learning opportunities in the field of education; and

(iii) collaboration between school districts and institutions of higher education in developing a career pathway for education.

(b) The grant program must allow and encourage small and proximate districts to collaborate in developing their grow your own grant programs.

(c) A school district is eligible for the program if the district has one or more schools impacted by a quality educator shortage.

(d) A postsecondary institution is eligible for a grant under this section.

(3) Contingent on appropriation by the legislature, the commissioner shall create and administer:

(a) a grant program for eligible postsecondary institutions, in partnership with at least one eligible school district, to develop or expand a grow your own grant program that encourages students to pursue a career in teaching; and

(b) a grow your own grant scholarship program that provides a last-dollar grant of up to $5,000 a year, not to exceed the cost of attendance, and not to exceed $10,000 total for any student, to students who:

(i) have participated or are participating in a grow your own grant program as described in subsection (3)(a);

(ii) are currently enrolled in a teacher preparation program in a licensure or endorsement area identified as most impacted by quality educator shortages;

(iii) commit to teaching in a school impacted by a quality educator shortage; and

(iv) if participation in a grow your own grant program occurred solely during high school, earned at least six postsecondary credits toward an education degree.

(4) The legislature intends that grants made to postsecondary institutions pursuant to subsection (3)(a) are one-time startup grants that include:

(a) a matching component provided by either a participating school district or the postsecondary institution; and

(b) a plan by the school district or postsecondary institution to sustain programs beyond the term of the grant.

(5) In accordance with 5-11-210, the commissioner shall report annually to the education interim committee on the status and impacts of the grant programs described in this section. The report must include:

(a) the number of students currently participating in a grow your own grant program;
(b) the number of former participants who hold a Montana teacher certificate; and
(c) the number of former participants who are teaching in the district where they participated in the grow your own grant program.
(6) For the purposes of this section, the following definitions apply:
(a) "Postsecondary institution" means a unit of the Montana university system or a tribal college or community college located in the state.
(b) "Quality educator shortage" means a shortage identified by the board of public education pursuant to 20-4-503. *(Terminates June 30, 2029—sec. 2, Ch. 774, L. 2025.)*

History: **En. Sec. 1, Ch. 514, L. 2021; amd. Sec. 1, Ch. 774, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 774, L. 2025. Amendment effective July 1, 2025.

Extension of Termination Date: Section 2, Ch. 774, L. 2025, amended sec. 6, Ch. 514, L. 2021, by extending the termination date imposed by Ch. 514 to June 30, 2029. Effective July 1, 2025.

Part 7
Teacher Residency Program

20-4-701. Legislative findings — intent. (1) The legislature finds and affirms that, pursuant to 20-9-309, the definition of "a basic system of free quality public elementary and secondary schools" requires the recruitment and retention of qualified and effective teachers.
(2) The legislature finds and declares that the provision of and participation in a teacher residency program is constitutionally compliant and protected. The legislature declares that any public or private regulation that discriminates against a school district or an undergraduate student participating in a teacher residency program is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution.
(3) The legislature intends that the teacher residency program be implemented in a collaborative and efficient manner among the various partnering entities and in a manner that results in teachers who participate in the program being:
(a) better prepared to teach effectively in the years following the program; and
(b) more inclined to remain in the teaching profession longer, especially in rural schools and high-need content areas.

History: **En. Sec. 1, Ch. 545, L. 2023.**

20-4-702. Teacher residency program. (1) The superintendent of public instruction shall administer a teacher residency program in collaboration with school districts and professional educator preparation programs.
(2) The teacher residency program must involve:
(a) a shared vision and partnership between:
(i) a resident;
(ii) a teacher-leader;
(iii) a school district; and
(iv) an educator preparation program;
(b) ensuring that a resident possesses the cultural competencies to succeed and be an effective educator in the school hosting the resident;
(c) selection and training for teacher-leaders;
(d) a resident being matched with a school district that provides a high-quality and supportive experience for residents working with a teacher-leader;
(e) flexible course delivery to allow a resident to complete required credits in the resident's preparation program;
(f) a cohort model with opportunities for virtual and in-person training and support;
(g) financial and other compensation for residents and teacher-leaders, including:
(i) housing for the resident or a housing allowance provided to the resident by the host school district;
(ii) for a resident in a professional educator preparation program accredited by the board of public education, a last-dollar tuition grant to eliminate tuition costs for the resident for the year of the residency;

(iii) a stipend for the teacher-leader; and

(iv) compensation for the resident, a portion of which may be conditioned on completion of the program and the signing of a teaching contract in a Montana public school for the following year; and

(h) a methodology for evaluating the effectiveness of the program.

(3) The superintendent of public instruction may contract with a professional educator preparation program located in a unit of the Montana university system to coordinate the teacher residency program or aspects of the program.

(4) If a resident does not complete the program or does not teach in a Montana public school for 3 or more years within 5 years of completing the teacher residency program, the superintendent of public instruction shall inform the commissioner of higher education and the commissioner shall convert the amount of any tuition grant provided to the resident under the program to a loan.

(5) For the purposes of this part, the following definitions apply:

(a) "Professional educator preparation program" means a postsecondary program intended to lead to teacher licensure that is accredited by the board of public education or recognized by the board as an essentially equivalent program for teacher certification purposes.

(b) "Resident" means a student enrolled in a professional educator preparation program who is selected for participation in a teacher residency program as described in this section and who commits to teaching in a Montana public school following completion of the teacher residency program.

(c) "School district" or "district" means the educational entities eligible for a quality educator and qualified staff payment under 20-9-327.

(d) "Teacher-leader" means an experienced classroom teacher who is selected to work with, coach, and mentor a resident.

(e) "Teacher residency program" or "program" means a partnership between a district and a professional educator preparation program to provide residents with a year-long, practice-based learning experience working directly with students in a manner that mirrors the experience of teachers in that school and meets the criteria of supervised teaching experience as defined by the board of public education.

History: En. Sec. 2, Ch. 545, L. 2023; amd. Sec. 3, Ch. 671, L. 2025; amd. Sec. 8, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 671, L. 2025. Amendment effective July 1, 2025.

Name Change — Directions to Code Commissioner: Pursuant to sec. 8, Ch. 739, L. 2025, in this section the Code Commissioner changed "quality educator" to "quality educator and qualified staff".

CHAPTER 5
PUPILS

Part 1 — Attendance

20-5-101. Admittance of child to school.
20-5-102. Compulsory enrollment and excuses.
20-5-103. Compulsory attendance and excuses.
20-5-104. Attendance officer.
20-5-105. Attendance officer — powers and duties.
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20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements.
20-5-109. Nonpublic and home school requirements for compulsory enrollment exemption.
20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school.
20-5-111. Responsibilities and rights of parent who provides home school.
20-5-112. Participation in extracurricular activities.

Part 2 — Duties — Prohibitions — Penalties

20-5-201. Duties and sanctions.
20-5-202. Suspension and expulsion.
20-5-203. Secret organization prohibited.
20-5-204 through 20-5-206 reserved.
20-5-207. Short title.

20-5-208. Definition.
20-5-209. Bullying of student prohibited — self-defense authorized.
20-5-210. Enforcement — exhaustion of administrative remedies.

Part 3 — Attendance Outside School District

20-5-301. Repealed.
20-5-302. Repealed.
20-5-303. Repealed.
20-5-304. Repealed.
20-5-305. Repealed.
20-5-306. Repealed.
20-5-307. Repealed.
20-5-308 through 20-5-310 reserved.
20-5-311. Repealed.
20-5-312. Repealed.
20-5-313. Repealed.
20-5-314. Reciprocal attendance agreement with adjoining state or province.
20-5-315. Repealed.
20-5-316. Repealed.
20-5-317 through 20-5-319 reserved.
20-5-320. Out-of-district attendance by parent or guardian request with no extenuating circumstances.
20-5-321. Attendance with mandatory approval — tuition and transportation.
20-5-322. Residency determination — notification — appeal for attendance agreement.
20-5-323. Tuition — transportation.
20-5-324. Tuition payment provisions — state obligations — district obligations — financing — reporting.

Part 4 — Health

20-5-401. Repealed.
20-5-402. Definitions.
20-5-403. Immunization required — release and acceptance of immunization records — notice of exemptions required.
20-5-404. Conditional attendance.
20-5-405. Exemptions — limitations on agency actions.
20-5-406. Immunization record.
20-5-407. Rulemaking.
20-5-408. Enforcement.
20-5-409. Failure to immunize or claim exemption — injunction.
20-5-410. Civil penalty.
20-5-411. Renumbered 20-1-220.
20-5-412. Definition — parent-designated adult — administration of glucagon — training.
20-5-413. Limits on liability.
20-5-414 through 20-5-419 reserved.
20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication — definitions.
20-5-421. Emergency use of epinephrine in school setting.
20-5-422. Emergency use of stock albuterol in school setting — limit on liability — reporting.
20-5-423 through 20-5-425 reserved.
20-5-426. Emergency use of opioid antagonist in school setting — limit on liability.

Part 5 — Enrollment of Pupil by Caretaker Relative

20-5-501. Purpose — legislative intent — parental rights — definitions.
20-5-502. Enrollment by caretaker relative — residency — affidavit.
20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format.

Chapter Cross-References

Penalty for abuse of students, 20-4-302.
Fees for school supplies, 20-9-214.
Powers of trustees to require pupils to pay fees, 20-9-214.
Extracurricular fund for pupil functions, 20-9-504.
Confidential communications by students, 26-1-809.
Use of force by parent, guardian, or teacher, 45-3-107.

Part 1
Attendance

Part Cross-References

School terms and holidays, Title 20, ch. 1, part 3.
Duty of trustees to administer attendance laws, 20-3-324.
School enrollment procedures to aid identification of missing children, 44-2-511.

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 5 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) (a) The trustees may at their discretion assign and admit a child to a school in the district who is under 5 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(b) As used in this subsection (3), "exceptional circumstances" means any of the following:

(i) the child is being admitted into a preschool program established by the trustees pursuant to 20-7-117;

(ii) the child is determined by the trustees to be ready for kindergarten and the child's parents have requested early entry into the district's regular 1-year kindergarten program;

(iii) the child is being admitted into an early targeted intervention classroom or jumpstart program pursuant to Title 20, chapter 7, part 18;

(iv) the child is a child with a disability and is being admitted into a special education program pursuant to 20-7-411; or

(v) the adult is 19 years of age or older and in the trustees' determination would benefit from educational programs offered by a school of the district.

(c) The admittance of an individual under this subsection (3) does not in and of itself impact the ANB calculations governed by 20-9-311.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) The trustees shall assign and admit a child whose parent or guardian is being relocated to Montana under military orders to a school in the district and allow the child to preliminarily enroll in classes and apply for programs offered by the district prior to arrival and establishing residency.

(6) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

(7) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the district outside of the adopted school boundaries applicable to the child is subject to the district's grievance policy. Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding the assignment is final.

(8) The trustees shall assign and admit a child who is enrolled in a nonpublic or home school and who meets the requirements of subsection (1) as a part-time enrollee at the request of the child's parent or guardian.

(9) For the purposes of this part, "part-time enrollee" means a qualifying pupil who is enrolled and admitted at one of the fractional levels that qualify for part-time ANB pursuant to 20-9-311(4)(a) or (4)(d).

History: En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979; amd. Sec. 74, Ch. 575, L. 1981; amd. Sec. 1, Ch. 120, L. 1989; amd. Sec. 1, Ch. 214, L. 1995; amd. Sec. 1, Ch. 374, L. 2007; amd. Sec. 1, Ch. 128, L. 2013; amd. Sec. 2, Ch. 16, L. 2019; amd. Sec. 1, Ch. 20, L. 2021; amd. Sec. 5, Ch. 608, L. 2023; amd. Sec. 1, Ch. 617, L. 2023; amd. Sec. 3, Ch. 439, L. 2025; amd. Sec. 1, Ch. 672, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 439, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 672, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 4, Ch. 672, L. 2025, provided: "[This act] applies to enrollment counts and ANB calculations conducted in school fiscal years beginning on or after July 1, 2025."

Cross-References

Free public education required, Art. X, sec. 1, Mont. Const.
Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
General rules for determining residence, 1-1-215.
School enrollment procedures to aid identification of missing children, 44-2-511.
Illegal discrimination, Title 49, ch. 2.
Governmental code of fair practices, Title 49, ch. 3.

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday; or

(b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when the parent, guardian, or person establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (2)(e), a home school is the instruction by a parent of the parent's child, stepchild, or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private school. A child enrolled in a nonpublic or home school may enroll on a part-time basis in a public school.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983; amd. Sec. 1, Ch. 249, L. 1991; amd. Sec. 293, Ch. 56, L. 2009; amd. Sec. 2, Ch. 617, L. 2023.

Cross-References

Supervised home and correspondence study, 20-7-116, 20-10-121, 20-10-125, 20-10-142.

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), a parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall ensure the child attends the school in which the child is enrolled for the school term and each school day in the term prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday; or

(b) the date the child completes 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

(d) The child is excused pursuant to 20-7-120.

(e) The child is excused pursuant to 40-6-701(1) or 40-6-703(1)(d).

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979; amd. Sec. 294, Ch. 56, L. 2009; amd. Sec. 1, Ch. 316, L. 2021; amd. Sec. 4, Ch. 693, L. 2023.

Cross-References

Definition of habitual truancy, 41-5-103.
Notice to parents of children absent from school, 44-2-507.

20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first class and districts of the second class with a dropout rate higher than the statewide average dropout rate as calculated by the office of public instruction shall appoint one or more of the district's staff as attendance officers;

(2) districts of the second class with a dropout rate at or below the statewide average dropout rate as calculated by the office of public instruction and districts of the third class may appoint one or more of the district's staff as attendance officers; or

(3) the county superintendent must be the attendance officer in second-class or third-class districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305; amd. Sec. 1, Ch. 281, L. 2013.

Cross-References

Additional positions of County Superintendent, 20-3-206.

20-5-105. Attendance officer — powers and duties. The attendance officer of a district:

(1) must, subject to district policy, be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) may, subject to district policy, take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct the child to the school in which the child is or should be enrolled;

(3) may, subject to district policy, do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) may, subject to district policy, institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) may, subject to district policy, keep a record of transactions for the inspection and information of the trustees and shall make reports in the manner and to whomever the trustees designate; and

(6) may, subject to district policy, perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306; amd. Sec. 295, Ch. 56, L. 2009; amd. Sec. 2, Ch. 281, L. 2013.

Cross-References

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

20-5-106. Truancy. (1) For the purposes of this part "truant" or "truancy" means the persistent nonattendance without excuse, as defined by district policy, for all or any part of a school day equivalent to the length of one class period of a child required to attend a school under 20-5-103.

(2) If an attendance officer discovers a child is truant, the attendance officer may make a reasonable effort to notify the parent, guardian, or other person responsible for the care of the child that the continued truancy of the child may result in the prosecution of the parent, guardian, or other person responsible for the care of the child under the provisions of this section. If the child is discovered to be truant after the attendance officer has made a reasonable effort to notify the parent, guardian, or other person responsible for the care of the child, the attendance officer may require that the parent, guardian, or other person responsible for the care of the child and the child meet with an individual designated by the school district to formulate a truancy plan to address and resolve the truancy. If the parent, guardian, or other person responsible for the care of the child fails to meet with the designated individual or fails to uphold the responsibilities under the provisions of the truancy plan, the attendance officer may refer the matter to the prosecuting attorney in a court of competent jurisdiction for a determination regarding whether to prosecute the parent, guardian, or other person responsible for the care of the child.

(3) (a) If convicted, the person shall be fined not more than $100, ordered to perform up to 20 hours of community service, or required to give bond in the penal sum of $100, with

sureties, conditioned on the person's agreement to cooperate with the district in implementing the truancy plan provided for in subsection (2) for the remainder of the current school term.

(b) If a person fails to comply with an order of the court issued under subsection (3)(a), the person may be imprisoned in the county jail for a term of not more than 3 days.

(4) (a) If the child is discovered by the attendance officer to be truant on 9 or more days or 54 or more parts of a day in 1 school year, the child may be referred to youth court as habitually truant under Title 41, chapter 5.

(b) Following a referral to youth court under subsection (4)(a), an attendance officer shall inform the youth court of any subsequent truancies by the child, and the youth court may find the child to be a youth in need of intervention as defined in 41-5-103 and make any of the dispositions provided in 41-5-1512.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307; amd. Sec. 296, Ch. 56, L. 2009; amd. Sec. 3, Ch. 281, L. 2013.

Cross-References

Duty of teachers to report truancy, 20-4-302.

20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because the child does not have the physical capacity or the child is absolutely required to work at home or elsewhere in order to provide support for the child or the child's family, the attendance officer shall report the case to the authorities charged with the relief of the poor. The welfare authorities shall offer relief that will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child must be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308; amd. Sec. 297, Ch. 56, L. 2009.

20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

Cross-References

Cooperative agreements with Indian tribes, Title 18, ch. 11.

20-5-109. Nonpublic and home school requirements for compulsory enrollment exemption. (1) To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic school:

(a) shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(b) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302;

(c) must be housed in a building that complies with applicable local health and safety regulations; and

(d) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111.

(2) To qualify its students for exemption from compulsory enrollment under 20-5-102, a home school:

(a) shall notify the county superintendent of schools of the county in which the home school is located in each school fiscal year of the student's attendance at the school;

(b) shall maintain records on pupil attendance and make the records available to the county superintendent on request;

(c) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302; and

(d) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111.

History: En. Sec. 2, Ch. 355, L. 1983; amd. Sec. 3, Ch. 498, L. 1989; amd. Sec. 9, Ch. 138, L. 2005; amd. Sec. 1, Ch. 724, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 724, L. 2025. Amendment effective May 13, 2025.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
Participation in extracurricular activities, 20-5-112.
Disease immunization, Title 20, ch. 5, part 4.
School enrollment procedures to aid identification of missing children, 44-2-511.
Building codes and standards, Title 50, ch. 60.

20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school. The trustees of a school district shall:

(1) adopt a district policy on assessment for placement of any child who enrolls in a school of the district and whose previous place of instruction was a nonpublic school that is not accredited;

(2) include in the adopted policy the following provisions:

(a) the specific assessment for placement to be administered to any child subject to the provisions of subsection (1);

(b) a procedure for grade and program placement of the child based on results of the assessment for placement, including considerations for the age and identified abilities of the child; and

(c) a hearing process before the board of trustees of the district if the parent or guardian of a child is not in agreement with the placement of the child and requests a hearing before the board; and

(3) administer the adopted policy required in subsection (1) in a uniform and fair manner.

History: En. Sec. 1, Ch. 498, L. 1989.

20-5-111. Responsibilities and rights of parent who provides home school. Subject to the provisions of 20-5-109, a parent has the authority to instruct the parent's child, stepchild, or ward in a home school and is solely responsible for:

(1) the educational philosophy of the home school;
(2) the selection of instructional materials, curriculum, and textbooks;
(3) the time, place, and method of instruction; and
(4) the evaluation of the home school instruction.

History: En. Sec. 1, Ch. 444, L. 1991; amd. Sec. 298, Ch. 56, L. 2009.

20-5-112. Participation in extracurricular activities. (1) (a) Except as provided in subsection (1)(b), a school district or an athletic association, conference, or organization with authority over interscholastic sports may not prohibit or restrict the ability of a student attending a nonpublic or home school meeting the requirements of 20-5-109 from participating in extracurricular activities at a school in the student's resident school district solely on the student's enrollment at the public school or on the number of hours the student physically attends the public school.

(b) A school district or an athletic association, conference, or organization with authority over interscholastic sports may prohibit or restrict the participation in extracurricular activities of a student attending a home school based on one or both of the following factors:

(i) the student's status as a United States citizen; and

(ii) the student's status as a Montana resident, as determined under the provisions of 1-1-215.

(2) Except as provided in subsections (1) and (3), a student attending a nonpublic or home school who participates in extracurricular activities at a public school is subject to:

(a) the same standards for participation as those required of full-time students enrolled in the school;

(b) the same rules of any interscholastic organization of which the school of participation is a member.

(3) (a) The academic eligibility for extracurricular participation for a student attending a nonpublic school must be attested by the head administrator of the nonpublic school.

(b) The academic eligibility for extracurricular participation for a student attending a home school must be attested in writing by the educator providing the student instruction with verification by the school principal. The verification may not include any form of student assessment.

History: En. Sec. 1, Ch. 297, L. 2021; amd. Sec. 1, Ch. 603, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 603, L. 2025. Amendment effective May 13, 2025.

Cross-References

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

Part 2
Duties — Prohibitions — Penalties

Part Cross-References

University students — qualifications and rights, Title 20, ch. 25, part 5.

20-5-201. Duties and sanctions. (1) A pupil:

(a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) shall pursue the required course of instruction;

(c) shall submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) is subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, or book belonging to the district, harms or threatens to harm another person or the person's property, or otherwise violates district policy regarding pupil conduct is subject to punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage. This subsection does not apply to a pupil who is protecting the pupil's self or another person as provided in 20-5-209.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice from the district that initiated the decision that the decision has been rescinded under the terms of subsection (4)(a).

History: **En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310; amd. Sec. 1, Ch. 403, L. 1993; amd. Sec. 2, Ch. 444, L. 2009; amd. Sec. 1, Ch. 266, L. 2023.**

Cross-References

Penalty for disturbance of school, 20-1-206.
Power of teacher or principal over pupils, 20-4-302, 20-4-402, 20-4-403.
Liability of parent for property damage by minor, 40-6-237, 40-6-238.

20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is any removal of a pupil for more than 20 school days without the provision of educational services and is a disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(2) (a) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm to school or to have possessed a firearm at school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school or to have possessed a firearm at school under this subsection (2)(a) must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration in writing to modify the requirement for expulsion of a student, up to and including eliminating the requirement for expulsion, on a case-by-case basis. The trustees shall annually review the district's weapons policy and any policy adopted under this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(b) A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, superintendent, or principal may immediately suspend a student if, prior to a hearing conducted pursuant to subsection (6), there is cause to believe the student brought a firearm to school or possessed a firearm at school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a student to bring a firearm to school for instructional activities sanctioned by the district if:

(i) the district has appropriate safeguards in place to ensure student safety; and

(ii) the firearm is secured in a locked container approved by the school district when the firearm is at school and is not in use for the instructional activity; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.

(5) Before holding a hearing as required under subsection (6) to determine if a student has violated this section, the trustees shall, in a clear and timely manner, notify the student if the student is an adult or notify the parent or guardian of a student if the student is a minor that the student may:

(a) waive the student's privacy interest by requesting that the hearing be held in public; and

(b) invite other individuals to attend the hearing.

(6) Before expelling a student under this section, the trustees shall hold a due process hearing that includes presentation of a summary of the information leading to the allegations and an opportunity for the student to respond to the allegations. The student may not be expelled unless the trustees find that the student knowingly, as defined in 1-1-204, brought a firearm to school or possessed a firearm at school.

(7) When a student subject to a hearing is found to have not violated this section, the student's school record must be expunged of the incident.

(8) The office of public instruction shall make available on its website the information gathered from school districts that is provided annually to the federal government under the reporting requirements of 20 U.S.C. 7151, provided that any personally identifiable information is redacted.

(9) The provisions of this section do not require expulsion of a student who has brought a firearm to school or possesses a firearm at school as long as the firearm is secured in a locked container approved by the school district or in a locked motor vehicle the entire time the firearm is at school, except while the firearm is in use for a school-sanctioned instructional activity.

(10) For the purposes of this section, the following definitions apply:

(a) "Firearm" has the same meaning as provided in 18 U.S.C. 921.

(b) (i) "School" means a building, grounds, or property of a public elementary or secondary school.

(ii) The term does not include a student's home, a locked vehicle, a parking lot, or a commercial business when the student is participating in an online, remote, or distance-learning setting.

History: En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; amd. Sec. 4, Ch. 135, L. 1981; amd. Sec. 1, Ch. 457, L. 1995; amd. Sec. 3, Ch. 444, L. 2009; amd. Sec. 4, Ch. 364, L. 2013; amd. Sec. 1, Ch. 303, L. 2021.

Cross-References

Safety instruction required, 87-2-105.

20-5-203. Secret organization prohibited. (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $5 or more than $25 for each violation.

History: En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.

20-5-204 through 20-5-206 reserved.

20-5-207. Short title. Sections 20-5-207 through 20-5-210 may be cited as the "Bully-Free Montana Act".

History: En. Sec. 1, Ch. 253, L. 2015.

20-5-208. Definition. (1) "Bullying" means any harassment, intimidation, hazing, or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or electronic communication or threat directed against a student that is persistent, severe, or repeated and that:

(a) causes a student physical harm, damages a student's property, or places a student in reasonable fear of harm to the student or the student's property;

(b) creates a hostile environment by interfering with or denying a student's access to an educational opportunity or benefit; or

(c) substantially and materially disrupts the orderly operation of a school.

(2) The term includes retaliation against a victim or witness who reports information about an act of bullying and includes acts of hazing associated with athletics or school-sponsored organizations or groups.

History: En. Sec. 2, Ch. 253, L. 2015.

20-5-209. Bullying of student prohibited — self-defense authorized. (1) Bullying of a student enrolled in a public K-12 school by another student or an employee is prohibited.

(2) A student who is physically attacked is entitled to use physical force that is reasonable and necessary for self-protection.

(3) A student who witnesses another person being physically attacked is entitled to use reasonable and necessary physical restraint, defined as the placing of hands on another in a manner that is reasonable or necessary to protect the person from physical harm.

(4) A school district shall investigate a student's use of physical force and may not reprimand or discipline a student who is found through the investigation to have more likely than not used physical force for self-protection or in protection of another pursuant to subsection (3).

History: En. Sec. 3, Ch. 253, L. 2015; amd. Sec. 2, Ch. 266, L. 2023.

20-5-210. Enforcement — exhaustion of administrative remedies. (1) A person alleging a violation of 20-5-207 through 20-5-210 may seek redress under any available law after exhausting all administrative remedies.

(2) Nothing in this section precludes a person from contacting law enforcement in relation to incidents of bullying at any point in time.

History: En. Sec. 4, Ch. 253, L. 2015; amd. Sec. 1, Ch. 216, L. 2017.

Part 3
Attendance Outside School District

Part Cross-References

Rules for determining residence, 1-1-215.

Duty of trustees to provide transportation, 20-10-121.

20-5-301. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313; amd. Sec. 1, Ch. 655, L. 1985; amd. Sec. 67, Ch. 370, L. 1987; amd. Sec. 22, Ch. 609, L. 1987; amd. Sec. 1, Ch. 492, L. 1989; amd. Sec. 1, Ch. 765, L. 1991.

20-5-302. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

20-5-303. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320; amd. Sec. 2, Ch. 249, L. 1981; amd. Sec. 1, Ch. 263, L. 1983; amd. Sec. 1, Ch. 611, L. 1985; amd. Sec. 1, Ch. 42, L. 1989; amd. Sec. 186, Ch. 368, L. 1991.

20-5-304. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

20-5-305. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201; amd. Sec. 1, Ch. 223, L. 1983; amd. Sec. 1, Ch. 279, L. 1987; amd. Sec. 11, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 380, L. 1991.

20-5-306. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

20-5-307. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203; amd. Sec. 1, Ch. 207, L. 1987; amd. Sec. 29, Ch. 83, L. 1989; amd. Sec. 4, Ch. 767, L. 1991; amd. Sec. 2, Ch. 133, L. 1993.

20-5-308 through 20-5-310 reserved.

20-5-311. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979; amd. Sec. 1, Ch. 504, L. 1983; amd. Sec. 1, Ch. 652, L. 1985; amd. Sec. 2, Ch. 655, L. 1985; amd. Sec. 1, Ch. 394, L. 1987; amd. Sec. 2, Ch. 765, L. 1991.

20-5-312. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979; amd. Sec. 2, Ch. 504, L. 1983; amd. Sec. 1, Ch. 70, L. 1985; amd. Sec. 2, Ch. 279, L. 1987; amd. Sec. 3, Ch. 337, L. 1989; amd. Sec. 12, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 380, L. 1991; amd. Sec. 5, Ch. 767, L. 1991; amd. Sec. 3, Ch. 133, L. 1993.

20-5-313. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979; amd. Sec. 1, Ch. 249, L. 1981; amd. Sec. 2, Ch. 263, L. 1983; amd. Sec. 2, Ch. 611, L. 1985; amd. Sec. 187, Ch. 368, L. 1991.

20-5-314. Reciprocal attendance agreement with adjoining state or province. (1) The superintendent of public instruction may execute a reciprocal attendance agreement with the superintendent of public instruction or a department of education of any state or province adjoining Montana to allow a child who is a Montana resident to attend school in the adjoining state or province and a child of the adjoining state or province to attend school in Montana. In negotiating a reciprocal attendance agreement, the tuition rates prescribed by 20-5-323 are waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal attendance agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(2) An out-of-district attendance agreement approved under the provisions of 20-5-320 and 20-5-321 must be completed for a child's attendance at a school outside the state or for an out-of-state child to attend a school in Montana.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318; amd. Sec. 8, Ch. 563, L. 1993.

20-5-315. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.

20-5-316. Repealed. Sec. 7, Ch. 529, L. 1997.

History: En. Sec. 11, Ch. 765, L. 1991; Sec. 20-7-437, MCA 1991; redes. 20-5-316 by Sec. 21, Ch. 563, L. 1993.

20-5-317 through 20-5-319 reserved.

20-5-320. Out-of-district attendance by parent or guardian request with no extenuating circumstances. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence at the request of the child's parent or guardian as described in this section.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend.

(b) The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction. The attendance agreement must set forth the financial obligations, if any, for costs incurred for transporting the child as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of attendance may adopt policies for the application process, including but not limited to reasonable timelines for the submission of applications.

(d) The trustees of the district of attendance shall serve children who are residents of the district and nonresident children seeking enrollment under 20-5-321 prior to enrolling children under this section.

(e) In reviewing and determining whether to approve an application for attendance by a nonresident child, the trustees of the district of attendance shall approve the application unless the trustees find that the impact of approval of the application will negatively impact the quality of education for resident pupils by grade level, by school, or in the district in the aggregate in one or more of the following ways:

(i) the approval would result in exceeding limits of:

(A) building construction standards pursuant to Title 50, chapter 60;

(B) capacity and ingress and egress elements, either by individual room or by school building, of any fire code authorized by Title 50, chapter 3;

(C) maximum student contact hours for a teacher of the class or maximum class sizes under accreditation standards of the board of public education; or

(D) evacuation elements of the district's adopted school safety plan;

(ii) the approval would impede meeting goals, standards, or objectives of quality that the trustees have previously adopted in a plan for continuous educational improvement required under rules adopted by the board of public education; or

(iii) the approval would risk jeopardizing the educational quality within the district because the nonresident child who is applying was:

(A) truant as defined in 20-5-106 in the last school district attended;

(B) expelled by another school district at any time; or

(C) suspended in school or out of school in any school district in which the nonresident child was enrolled in any of the 3 school fiscal years preceding the school fiscal year for which attendance is requested. This subsection (2)(e)(iii)(C) does not apply to a student who is eligible for special education or related services.

(f) The trustees of a district that receives more applications than the district can accommodate under subsections (2)(e)(i) and (2)(e)(ii) may adopt and implement policy providing priority among the applications on any rational basis that prioritizes the quality of education for students who are residents of the district of attendance and the obligations of resident taxpayers.

(3) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any transportation requirement. The tuition requirements under 20-5-323 and 20-5-324 apply to agreements under this subsection. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(4) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2.

History: En. Sec. 1, Ch. 563, L. 1993; amd. Sec. 1, Ch. 464, L. 2001; amd. Sec. 225, Ch. 271, L. 2019; amd. Sec. 1, Ch. 238, L. 2021; amd. Sec. 1, Ch. 368, L. 2023; amd. Sec. 1, Ch. 431, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever any of the following extenuating circumstances exist:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation;

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(4)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule on a decision of the county transportation committee without an appeal being filed.

(c) (i) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c)(i) may continue to attend the elementary school after the other child has left the high school.

(ii) the child is a member of a family that is required to send another child outside of the high school district to attend elementary school and the child of high school age may more conveniently attend a high school where the elementary school is located, provided that the child resides more than 3 miles from a high school in the resident district or that the parent is required to move to the high school district where the elementary school is located to enroll another child in elementary school. A child enrolled in a high school pursuant to this subsection (1)(c)(ii) may continue to attend the high school after the other child has left the elementary school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for transportation as provided in 20-5-323 and Title 20, chapter 10.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

History: En. Sec. 2, Ch. 563, L. 1993; amd. Sec. 1, Ch. 32, Sp. L. November 1993; amd. Sec. 1, Ch. 458, L. 1995; amd. Sec. 65, Ch. 546, L. 1995; amd. Sec. 1, Ch. 529, L. 1997; amd. Sec. 2, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 464, L. 2001; amd. Sec. 2, Ch. 463, L. 2005; amd. Sec. 5, Ch. 442, L. 2007; amd. Sec. 2, Ch. 211, L. 2011; amd. Sec. 2, Ch. 238, L. 2021; amd. Sec. 2, Ch. 368, L. 2023.

20-5-322. Residency determination — notification — appeal for attendance agreement. (1) For the purposes of 20-5-320 through 20-5-324, except as provided in 20-9-707, a child's district of residence must be determined on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of attendance shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees of the district of attendance shall:

(a) provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence. In the case of a disapproval, the trustees shall provide the specific allowable reason for the disapproval pursuant to 20-5-320(2)(e) or 20-5-321(4) and supporting documentation.

(b) for an approved agreement, provide a copy of the completed agreement to the county superintendent of schools of the county of residence and the county superintendent of schools of the county of attendance.

(4) If an out-of-district attendance agreement is disapproved or no action is taken, the parent or guardian may appeal the disapproval or lack of action to the county superintendent of the district of attendance and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies pursuant to 20-3-107 and 20-3-210.

(5) For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year.

History: **En. Sec. 3, Ch. 563, L. 1993; amd. Sec. 1, Ch. 132, L. 2005; amd. Sec. 2, Ch. 215, L. 2005; amd. Sec. 22, Ch. 44, L. 2007; amd. Sec. 3, Ch. 368, L. 2023; amd. Sec. 2, Ch. 431, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

20-5-323. *(Temporary)* **Tuition — transportation.** (1) (a) Except as provided in subsections (1)(b), (1)(c), and (2) through (5), whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall pay the district of attendance a percentage equal to the lesser of the percentage of either school district's adopted general fund budget funded by BASE and over-BASE property tax levies in the year of attendance not to exceed 35.3% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

(b) If the district of residence is a nonoperating district, the required tuition is the percentage of the adopted general fund budget funded by over-BASE property taxes in the district of attendance in the year of attendance, not to exceed 20% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

(c) Tuition amounts for partial-year attendance, including midyear changes in residency under 1-1-215, must be prorated for the portion of the year the student is enrolled as a nonresident student, based on the percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction days scheduled by the school district of attendance in the year of attendance.

(2) Except for the tuition paid by the district of residence and the superintendent of public instruction under 20-5-324(2)(b), the district of residence shall pay the district of attendance as described in 20-5-324 the tuition for a child with a disability, and the amount of tuition must be the regular rate under subsection (1), plus the special education tuition rate determined by the district of attendance under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils. The rules must provide:

(a) that tuition amounts must be reduced by the funding generated by the district of attendance due to the child's attendance; and

(b) an option for tuition set at the actual unique costs of providing a free appropriate public education.

(3) The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district or entity responsible for the tuition payments shall approve an agreement for the tuition cost;

(b) for a Montana resident student, 120% of the tuition per-ANB amount, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this subsection (3) may not exceed $2,500 per student.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) (a) An attendance agreement established under 20-5-320 or 20-5-321 must set forth the financial obligations, if any, for costs incurred for transportation as provided in this subsection (6) and Title 20, chapter 10.

(b) If the attendance agreement is for a child with a disability who has transportation included in the child's individualized education program, transportation or the costs of transportation must be paid by the child's district of residence.

(c) Except as provided in subsection (6)(b) and unless otherwise agreed to in the out-of-district attendance agreement:

(i) when a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child is responsible for transportation and the child is not an eligible transportee as defined in 20-10-101. The district of attendance may discretionarily provide transportation for a child who is not an eligible transportee pursuant to 20-10-122.

(ii) when a child attends a school outside the child's district of residence under the provisions of 20-5-321(1)(a) or (1)(b), the district of residence is responsible for transportation; and

(iii) when a child attends a school outside the child's district of residence under the provisions of 20-5-321(1)(d) or (1)(e), the district of attendance is responsible for transportation consistent with and subject to the provisions of 20 U.S.C. 6312(c)(5).

(d) The amount, if any, charged for transportation may not exceed the average transportation cost for each student in the child's district of residence. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October enrollment count for the preceding fiscal year.

(7) As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate established in 20-9-306, plus the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321.

20-5-323. *(Effective July 1, 2026)* **Tuition — transportation.** (1) (a) Except as provided in subsections (1)(b), (1)(c), and (2) through (5), whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall pay the district of attendance a percentage equal to the lesser of the percentage of either school district's adopted general fund budget funded by over-BASE property tax levies in the year of attendance not to exceed 20% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

(b) If the district of residence is a nonoperating district, the required tuition is the percentage of the adopted general fund budget funded by over-BASE property taxes in the district of attendance in the year of attendance, not to exceed 20% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

(c) Tuition amounts for partial-year attendance, including midyear changes in residency under 1-1-215, must be prorated for the portion of the year the student is enrolled as a nonresident student, based on the percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction days scheduled by the school district of attendance in the year of attendance.

(2) Except for the tuition paid by the district of residence and the superintendent of public instruction under 20-5-324(2)(b), the district of residence shall pay the district of attendance as described in 20-5-324 the tuition for a child with a disability, and the amount of tuition must be the regular rate under subsection (1), plus the special education tuition rate determined by the district of attendance under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils. The rules must provide:

(a) that tuition amounts must be reduced by the funding generated by the district of attendance due to the child's attendance; and

(b) an option for tuition set at the actual unique costs of providing a free appropriate public education.

(3) The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district or entity responsible for the tuition payments shall approve an agreement for the tuition cost;

(b) for a Montana resident student, 120% of the tuition per-ANB amount, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this subsection (3) may not exceed $2,500 per student.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) (a) An attendance agreement established under 20-5-320 or 20-5-321 must set forth the financial obligations, if any, for costs incurred for transportation as provided in this subsection (6) and Title 20, chapter 10.

(b) If the attendance agreement is for a child with a disability who has transportation included in the child's individualized education program, transportation or the costs of transportation must be paid by the child's district of residence.

(c) Except as provided in subsection (6)(b) and unless otherwise agreed to in the out-of-district attendance agreement:

(i) when a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child is responsible for transportation and the child is not an eligible transportee as defined in 20-10-101. The district of attendance may discretionarily provide transportation for a child who is not an eligible transportee pursuant to 20-10-122.

(ii) when a child attends a school outside the child's district of residence under the provisions of 20-5-321(1)(a) or (1)(b), the district of residence is responsible for transportation; and

(iii) when a child attends a school outside the child's district of residence under the provisions of 20-5-321(1)(d) or (1)(e), the district of attendance is responsible for transportation consistent with and subject to the provisions of 20 U.S.C. 6312(c)(5).

(d) The amount, if any, charged for transportation may not exceed the average transportation cost for each student in the child's district of residence. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October enrollment count for the preceding fiscal year.

(7) As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate established in 20-9-306, plus the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321.

History: **En. Sec. 4, Ch. 563, L. 1993; amd. Sec. 60, Ch. 633, L. 1993; amd. Sec. 2, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 409, L. 2001; amd. Sec. 3, Ch. 464, L. 2001; amd. Sec. 1, Ch. 462, L. 2005; amd. Sec. 5, Ch. 4, Sp. L. December 2005; amd. Sec. 1, Ch. 371, L. 2021; amd. Sec. 4, Ch. 368, L. 2023; amd. Sec. 5, Ch. 424, L. 2025; amd. Sec. 3, Ch. 431, L. 2025, Sec. 9, Ch. 431, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 5, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 3, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Subsection (1)(b) as inserted by sec. 3, Ch. 431, L. 2025, was replaced by sec. 9, Ch. 431, L. 2025, a coordination section.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

20-5-324. *(Temporary)* **Tuition payment provisions — state obligations — district obligations — financing — reporting.** (1) In order to be eligible to receive state reimbursement or payment under subsection (2)(a), the trustees of a district shall report to the superintendent of public instruction by June 30 the following information for the concluding school fiscal year:

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(i) except as provided in subsection (2)(b) of this section, pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c) of this section, prorated for the actual days of enrollment;

(ii) determine the total per-ANB entitlement for which the district of residence would have been eligible if the students reported in subsections (1)(d) and (1)(e) of this section had been enrolled in the resident district in the prior year; and

(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each student reported in subsections (1)(d) and (1)(e) of this section, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(b) The district of residence for each child reported under the provisions of subsection (1)(a) of this section shall pay the district of attendance the tuition rate under 20-5-323(1) prorated for the actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition amount pursuant to 20-5-323(2) and (3).

(3) Whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, by July 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under 20-5-323.

(4) (a) (i) When a child attends a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321 or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance any tuition amount required under 20-5-323 from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees and any transportation amount from the levy authorized to support the transportation fund or from the district's general fund or

any other legally available fund in the discretion of the trustees. If the district of residence is a nonoperating school district, the district shall use the nonoperating fund and impose applicable levies required to satisfy any tuition and transportation obligations.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under this part. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(b) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection (4)(b) is limited to the actual cost of service under the child's individualized education program minus:

(i) the student's state special education payment;

(ii) the student's federal special education payment;

(iii) the student's per-ANB amount;

(iv) the prorated portion of the district's basic entitlement for each qualifying student; and

(v) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

(5) (a) Except as provided in subsection (5)(b), the district of attendance shall anticipate and credit tuition receipts to the district general fund, to reduce the general fund net levy requirement first to the BASE budget and any remaining to the over-BASE budget pursuant to 20-9-141, and transportation receipts to the transportation fund. In order to provide local property tax reduction for the tuition amount received under 20-5-323(1), the amount of the reduction in the BASE budget mills levied as a result of anticipated tuition payments must be calculated as a final step in computing the district's general fund net BASE levy requirement pursuant to the procedure set forth in 20-9-141(2) and the district's guaranteed tax base aid must be calculated prior to the reduction in BASE mills.

(b) Any tuition receipts received for a pupil who is a child with a disability under 20-5-323(2) or for a student without disabilities who requires a program with costs that exceed the average district costs under 20-5-323(3) that exceed the tuition amount received for a pupil without disabilities must be deposited in the district miscellaneous programs fund and must be used in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(6) The reimbursements paid under subsection (2)(a)(iii) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(7) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.

(8) (a) In accordance with 5-11-210, the superintendent of public instruction shall report annually to the education interim committee on out-of-district attendance under 20-5-320 through 20-5-324 in the prior school fiscal year. The report must include the following for each school district:

(i) the total enrollment of the district;

(ii) the number of nonresident students served by the district under out-of-district attendance agreements, broken down by district of residence; and

(iii) the number of resident students served by other school districts under out-of-district attendance agreements, broken down by district of attendance.

(b) School districts shall provide the superintendent of public instruction with the information necessary to comply with this subsection (8) in a manner prescribed by the superintendent that must minimize the reporting burden on school districts.

20-5-324. *(Effective July 1, 2026)* **Tuition payment provisions — state obligations — district obligations — financing — reporting.** (1) In order to be eligible to receive state reimbursement or payment under subsection (2)(a), the trustees of a district shall report to the superintendent of public instruction by June 30 the following information for the concluding school fiscal year:

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(i) except as provided in subsection (2)(b) of this section, pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c) of this section, prorated for the actual days of enrollment;

(ii) determine the total per-ANB entitlement for which the district of residence would have been eligible if the students reported in subsections (1)(d) and (1)(e) of this section had been enrolled in the resident district in the prior year; and

(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each student reported in subsections (1)(d) and (1)(e) of this section, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(b) The district of residence for each child reported under the provisions of subsection (1)(a) of this section shall pay the district of attendance the tuition rate under 20-5-323(1) prorated for the actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition amount pursuant to 20-5-323(2) and (3).

(3) Whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, by July 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under 20-5-323.

(4) (a) (i) When a child attends a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321 or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance any tuition amount required under 20-5-323 from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees and any transportation amount from the levy authorized to support the transportation fund or from the district's general fund or any other legally available fund in the discretion of the trustees. If the district of residence is a nonoperating school district, the district shall use the nonoperating fund and impose applicable levies required to satisfy any tuition and transportation obligations.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under this part. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(b) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection (4)(b) is limited to the actual cost of service under the child's individualized education program minus:

(i) the student's state special education payment;

(ii) the student's federal special education payment;

(iii) the student's per-ANB amount;

(iv) the prorated portion of the district's basic entitlement for each qualifying student; and

(v) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

(5) (a) Except as provided in subsection (5)(b), the district of attendance shall anticipate and credit tuition receipts to the district general fund over-BASE budget pursuant to 20-9-141 and transportation receipts to the transportation fund.

(b) Any tuition receipts received for a pupil who is a child with a disability under 20-5-323(2) or for a student without disabilities who requires a program with costs that exceed the average district costs under 20-5-323(3) that exceed the tuition amount received for a pupil without disabilities must be deposited in the district miscellaneous programs fund and must be used in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(6) The reimbursements paid under subsection (2)(a)(iii) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(7) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.

(8) (a) In accordance with 5-11-210, the superintendent of public instruction shall report annually to the education interim committee on out-of-district attendance under 20-5-320 through 20-5-324 in the prior school fiscal year. The report must include the following for each school district:

(i) the total enrollment of the district;

(ii) the number of nonresident students served by the district under out-of-district attendance agreements, broken down by district of residence; and

(iii) the number of resident students served by other school districts under out-of-district attendance agreements, broken down by district of attendance.

(b) School districts shall provide the superintendent of public instruction with the information necessary to comply with this subsection (8) in a manner prescribed by the superintendent that must minimize the reporting burden on school districts.

History: **En. Sec. 5, Ch. 563, L. 1993; amd. Sec. 27, Ch. 509, L. 1995; amd. Sec. 9, Ch. 22, L. 1997; amd. Sec. 1, Ch. 389, L. 1997; amd. Sec. 3, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 4, Ch. 464, L. 2001; amd. Sec. 1, Ch. 130, L. 2003; amd. Sec. 3, Ch. 463, L. 2005; amd. Sec. 1, Ch. 305, L. 2013; amd. Sec. 2, Ch. 371, L. 2021; amd. Sec. 5, Ch. 368, L. 2023; amd. Sec. 6, Ch. 424, L. 2025; amd. Sec. 4, Ch. 431, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 6, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 4, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

Part 4
Health

Part Cross-References

Duty of trustees to retain physician and nurse and to visit schools to examine conditions, 20-3-324.

Contributions by school boards to health boards authorized, 50-2-113.

20-5-401. Repealed. Sec. 13, Ch. 147, L. 1979.

History: **En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).**

20-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is composed of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool.

History: En. Sec. 1, Ch. 147, L. 1979; amd. Sec. 1, Ch. 644, L. 1989; amd. Sec. 12, Ch. 308, L. 1995; amd. Sec. 47, Ch. 418, L. 1995; amd. Sec. 66, Ch. 546, L. 1995.

20-5-403. Immunization required — release and acceptance of immunization records — notice of exemptions required. (1) The governing authority of any school other than a postsecondary school may not allow a person to attend as a pupil unless the person:

(a) has been immunized against varicella, diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department;

(b) has been immunized against Haemophilus influenza type "b" before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption as provided in 20-5-405.

(2) (a) The governing authority of a postsecondary school may not allow a person to attend as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption as provided in 20-5-405.

(b) The governing authority of a postsecondary school may, as a condition of attendance, impose immunization requirements that are more stringent than those required by this part, subject to the exemptions provided for in 20-5-405.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall retain a certified copy for the permanent record and send the original immunization records for the pupil to the school district to which the pupil transfers.

(4) Any communication from a school, including websites and social media postings, regarding the immunizations required under this section must include information about the exemptions available under 20-5-405, including copies of, or links to, exemption forms prescribed or developed by the department under 20-5-405.

History: En. Sec. 2, Ch. 147, L. 1979; amd. Sec. 1, Ch. 509, L. 1981; amd. Sec. 1, Ch. 102, L. 1983; amd. Sec. 2, Ch. 644, L. 1989; amd. Sec. 1, Ch. 165, L. 1991; amd. Sec. 1, Ch. 156, L. 2005; amd. Sec. 1, Ch. 124, L. 2015; amd. Sec. 1, Ch. 294, L. 2021; amd. Sec. 1, Ch. 534, L. 2023.

Cross-References

Regulation of schools in matters of health, 50-1-206.

20-5-404. Conditional attendance. The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of the vaccine for each disease listed in 20-5-403, except that Haemophilus influenza type "b" vaccine is required only for children under 5 years of age.

History: En. Sec. 3, Ch. 147, L. 1979; amd. Sec. 2, Ch. 102, L. 1983; amd. Sec. 3, Ch. 644, L. 1989; amd. Sec. 2, Ch. 165, L. 1991; amd. Sec. 2, Ch. 124, L. 2015.

20-5-405. Exemptions — limitations on agency actions. (1) (a) There is a religious exemption to the immunizations required under 20-5-403. A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations required under 20-5-403 if the person files with the governing authority an affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer.

(b) The statement must be signed:

(i) by the person enrolled or seeking to enroll in the school, if the person is an adult; or

(ii) if the person is a minor, by a parent, guardian, or adult who has the responsibility for the care and custody of the minor.

(c) The statement must be maintained as part of the person's immunization records.

(2) (a) There is a medical exemption to the immunizations required under 20-5-403. A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if a written medical exemption statement signed by a health care provider specified in subsection (2)(c) is filed with the governing authority. The medical exemption statement must:

(i) attest that the physical condition of the person enrolled or seeking to enroll in school or the medical circumstances relating to the person indicate that some or all of the required immunizations are not considered safe; and

(ii) indicate the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization.

(b) The person is exempt from the requirements of this part to the extent indicated by the medical exemption statement.

(c) The medical exemption statement must be signed by a person who:

(i) is licensed, certified, or otherwise authorized by the laws of any state or Canada to provide health care as defined in 50-16-504;

(ii) is authorized within the person's scope of practice to administer the immunizations to which the exemption applies; and

(iii) has previously provided health care to the person seeking the exemption or has administered an immunization to which the person seeking an exemption has had an adverse reaction.

(3) (a) The department may not require an exemption form under this section that imposes requirements that are more burdensome or otherwise in excess of the requirements described in this section. A form prescribed by the department that contains requirements not expressly described in this section is void to the extent that it purports to impose requirements not included in this section.

(b) A governing authority may not deny an exemption on the basis that a person has not completed portions of the exemption form that are void under this subsection (3).

(c) The department is not authorized to review a completed medical exemption statement or medical exemption form for the purpose of granting or denying a medical exemption.

(d) An exemption statement or form under this section must be maintained as part of the person's immunization records and may not be photocopied or otherwise duplicated for use by a third party without the permission of the student's parent or, if the student is an adult, the written consent of the student.

(4) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to the disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease.

History: En. Sec. 4, Ch. 147, L. 1979; amd. Sec. 3, Ch. 102, L. 1983; amd. Sec. 4, Ch. 644, L. 1989; amd. Sec. 299, Ch. 56, L. 2009; amd. Sec. 2, Ch. 294, L. 2021; amd. Sec. 2, Ch. 534, L. 2023.

20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization status, including any exemptions, of each pupil as part of the pupil's permanent school record.

History: **En. Sec. 5, Ch. 147, L. 1979; amd. Sec. 300, Ch. 56, L. 2009; amd. Sec. 3, Ch. 294, L. 2021.**

Cross-References

Public records, Title 2, ch. 6.

20-5-407. Rulemaking. The department may adopt rules necessary to implement the provisions of this part.

History: **En. Sec. 6, Ch. 147, L. 1979.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-5-408. Enforcement. (1) The governing authority of any school other than a postsecondary school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) The governing authority shall conform with the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99.

(3) A student's health records, including information related to immunizations received and immunization exemptions, are considered part of the student's education record and are protected from disclosure as provided in the Family Educational Rights and Privacy Act of 1974.

History: **En. Sec. 7, Ch. 147, L. 1979; amd. Sec. 4, Ch. 102, L. 1983; amd. Sec. 5, Ch. 644, L. 1989; amd. Sec. 4, Ch. 294, L. 2021.**

20-5-409. Failure to immunize or claim exemption — injunction. (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

History: **En. Sec. 8, Ch. 147, L. 1979.**

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Affidavits, Title 26, ch. 1, part 10.
Injunctions, Title 27, ch. 19.

20-5-410. Civil penalty. (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed $500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

History: **En. Sec. 9, Ch. 147, L. 1979.**

20-5-411. Renumbered 20-1-220. Code Commissioner, 1997.

20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.

History: En. Sec. 1, Ch. 421, L. 2003; amd. Sec. 3, Ch. 393, L. 2007; amd. Sec. 6, Ch. 442, L. 2007.

20-5-413. Limits on liability. (1) A parent-designated adult who administers glucagon pursuant to 20-5-412 is not liable to a person for civil damages resulting from administering the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) The school district employing the parent-designated adult is not liable to a person for civil damages resulting from the administration of the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

History: En. Sec. 2, Ch. 421, L. 2003.

20-5-414 through 20-5-419 reserved.

20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication — definitions. (1) As used in 20-5-421, 20-5-422, and this section, the following definitions apply:

(a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing medical intervention.

(c) "Authorized personnel" means an employee or agent identified by a school who is approved by the school administrator to administer a stock medication in a school setting or at a related activity pursuant to 20-5-421, 20-5-422, or 20-5-426.

(d) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, autoinjectable epinephrine, and epinephrine nasal spray, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(1)(h).

(e) "Respiratory distress" means a person's inability to breathe adequately, including the perceived or actual presence of associated symptoms such as coughing, wheezing, or shortness of breath.

(f) "Self-administration" means a pupil's discretionary use of the medication prescribed for the pupil.

(g) "Severe allergies" means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(h) "Stock albuterol" means quick-relief asthma medication that is approved by the United States food and drug administration for the treatment of respiratory distress. The term includes albuterol medication delivered through a metered dose inhaler or dry-powder inhaler that includes a spacer or holding chamber that attaches to a metered dose inhaler to improve the delivery of medication.

(2) A school, whether public or nonpublic, shall permit the possession or self-administration of medication, as prescribed, by a pupil with asthma, severe allergies, or anaphylaxis if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the possession or self-administration of medication as prescribed;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered as prescribed;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to self-administer the asthma, severe allergy, or anaphylaxis medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma, severe allergies, or anaphylaxis episodes of the pupil and for medication use, as prescribed, by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(5) The permission for self-administration of asthma, severe allergy, or anaphylaxis medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication expires or the dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma, severe allergies, or anaphylaxis may possess and use the pupil's medication as prescribed:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma, severe allergy, or anaphylaxis emergency.

(8) Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.

(9) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma, severe allergy, or anaphylaxis medications.

History: En. Sec. 1, Ch. 306, L. 2005; amd. Sec. 33, Ch. 519, L. 2005; amd. Sec. 23, Ch. 44, L. 2007; amd. Sec. 1, Ch. 346, L. 2007; amd. Sec. 4, Ch. 393, L. 2007; amd. Sec. 7, Ch. 442, L. 2007; amd. Sec. 1, Ch. 189, L. 2013; amd. Sec. 1, Ch. 151, L. 2025; amd. Sec. 1, Ch. 322, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 151, L. 2025. Amendment effective April 16, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 322, L. 2025. Amendment effective July 1, 2025.

20-5-421. Emergency use of epinephrine in school setting. A school, whether public or nonpublic, may maintain a stock supply of autoinjectable epinephrine or epinephrine nasal spray to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for actual or perceived anaphylaxis. A school that intends to obtain an order for emergency use of epinephrine in a school setting or at related activities shall adhere to the following requirements:

(1) A school that stocks an epinephrine autoinjector or nasal spray shall develop a protocol related to the training of school employees, the maintenance and location of the epinephrine autoinjector or nasal spray, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(2) The epinephrine autoinjector or nasal spray must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an epinephrine autoinjector or nasal spray must be filled by a licensed pharmacy.

(3) The school shall provide training to authorized personnel. The training must include causes of anaphylaxis, recognition of signs and symptoms of anaphylaxis, indications for the administration of epinephrine, the administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(4) The epinephrine autoinjector or nasal spray must be kept in a secure and easily accessible location.

(5) A school nurse or other authorized personnel may, in good faith, administer the epinephrine to any student or nonstudent who is experiencing a potential life-threatening anaphylactic reaction based on the protocol developed by the school.

(6) If a school stocks an epinephrine autoinjector or nasal spray that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the epinephrine autoinjector or nasal spray in an anaphylactic emergency. The school shall make the protocol available upon request.

(7) In accordance with the provisions of 27-1-714, a school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of epinephrine to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

History: En. Sec. 2, Ch. 189, L. 2013; amd. Sec. 2, Ch. 151, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 151, L. 2025. Amendment effective April 16, 2025.

20-5-422. Emergency use of stock albuterol in school setting — limit on liability — reporting. A public or nonpublic school may maintain a supply of stock albuterol, including single-use disposable holding chambers if necessary, to be administered by a school nurse or other authorized personnel to a student or nonstudent as needed for respiratory distress. A school that intends to obtain an order for emergency use of stock albuterol in a school setting or at related activities shall adhere to the following requirements:

(1) A school that keeps stock albuterol on site shall develop a protocol related to the training of school employees, the maintenance and location of the stock albuterol, and the immediate

and long-term followup to the administration of the medication, including determining when to make a 9-1-1 emergency call.

(2) The stock albuterol must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient and each prescription for stock albuterol must be filled by a licensed pharmacy.

(3) A licensed pharmacist may dispense stock albuterol medication and spacers to schools in accordance with this section.

(4) A school may enter into an agreement with a manufacturer of bronchodilators or spacers, a third-party supplier of bronchodilator or spacers, or a health care office to obtain bronchodilators or spacers at no charge, at market price, or at a reduced price. A school district may accept gifts, grants, or donations to purchase bronchodilators or spacers for emergency use.

(5) Authorized personnel shall complete an annual asthma education program approved by the department of public health and human services. The training must include causes of respiratory distress, recognition of signs and symptoms of respiratory distress, indications for the administration of albuterol, administration techniques, and the need for immediate access to a certified emergency responder.

(6) The stock albuterol must be kept in a secure and easily accessible location.

(7) A school nurse or other authorized personnel may, in good faith, administer the stock albuterol to any student or nonstudent who is experiencing respiratory distress based on the protocol developed by the school.

(8) If a school keeps stock albuterol on site that has been prescribed to the school, the school shall inform parents or guardians about the potential use of stock albuterol in a respiratory distress emergency. The school shall make the protocol available on request.

(9) In accordance with the provisions of 27-1-714, a school district or nonpublic school and its employees and agents are not liable as a result of an injury arising from the administration of stock albuterol to a student or nonstudent unless an act or omission is a result of gross negligence, willful or wanton misconduct, or an intentional tort.

(10) This section may not be interpreted to relieve a student's parent or guardian of providing a student's medication or create an expectation that a school will have stock albuterol available.

(11) A school that voluntarily possesses and makes available stock albuterol pursuant to this section shall:

(a) document the use of stock albuterol following an event and report this use to the department of public health and human services within 3 days. The reporting format and required details must be determined by the department.

(b) submit an annual report to the department of public health and human services summarizing the use of stock albuterol during each school year. The reporting format and required details must be determined by the department.

History: **En. Sec. 2, Ch. 322, L. 2025.**

Compiler's Comments

Effective Date: Section 4, Ch. 322, L. 2025, provided: "[This act] is effective July 1, 2025."

20-5-423 through 20-5-425 reserved.

20-5-426. Emergency use of opioid antagonist in school setting — limit on liability. (1) A school, whether public or nonpublic, may maintain a stock supply of an opioid antagonist to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for an actual or perceived opioid overdose. A school that intends to obtain an order for emergency use of an opioid antagonist in a school setting or at related activities shall adhere to the following requirements:

(a) A school that stocks an opioid antagonist shall develop a protocol related to the training of school employees, the maintenance and location of the opioid antagonist, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(b) The opioid antagonist must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an opioid antagonist must be filled by a licensed pharmacy.

(c) The school shall provide training to authorized personnel. The training must include causes of opioid overdose, recognition of signs and symptoms of opioid overdose, indications for the administration of an opioid antagonist, administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(d) The opioid antagonist must be kept in a secure and easily accessible location.

(e) A school nurse or other authorized personnel may, in good faith, administer the opioid antagonist to any student or nonstudent who is experiencing a potential life-threatening opioid overdose based on the protocol developed by the school.

(f) If a school stocks an opioid antagonist that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the opioid antagonist in an opioid overdose emergency. The school shall make the protocol available upon request.

(g) A school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of an opioid antagonist, including an expired opioid antagonist, to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) For the purposes of this section, "opioid antagonist" means a drug that binds to opioid receptors and blocks or inhibits the effect of opioids acting on those receptors, including but not limited to naloxone hydrochloride or any other similarly acting drug approved by the United States food and drug administration.

History: En. Sec. 1, Ch. 154, L. 2017; amd. Sec. 1, Ch. 581, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 581, L. 2025. Amendment effective October 1, 2025.

Part 5
Enrollment of Pupil by Caretaker Relative

20-5-501. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) This part is not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, does not grant legal custody of the child to the caretaker relative, and does not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of this part, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in compliance with 20-5-503.

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care by a health care provider, for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological parent, adoptive parent, or other legal guardian of the child whose parental rights have not been terminated.

History: En. Sec. 1, Ch. 442, L. 2007.

20-5-502. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school using the rules of residence provided in 1-1-215 if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents after the parents voluntarily leave the child with the caretaker relative or a parent whom the caretaker relative is able to contact is unable or unwilling to regain custody of the child;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) If the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school district in which the caretaker relative seeks to enroll the child may either implement the previous school district's disciplinary action without further due process or hold a hearing and determine whether the student's conduct in the previous school district merits denial of enrollment. If the district decides to enroll the child, then the school district may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

History: En. Sec. 2, Ch. 442, L. 2007; amd. Sec. 3, Ch. 211, L. 2011.

20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to

the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 20-5-503, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

☐ The child is now residing with me on a full-time basis.

☐ No adequate provision, such as appointment of a legal custodian or guardian or execution of a notarized power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this .... day of ...., 20....

....

(Signature of caretaker relative)

....

(Signature, county, state, and seal of notary public)

7. NOTICES TO CARETAKER RELATIVE:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is effective until the earlier of:

i. the end of the first school year after delivery of the affidavit to a school district;

ii. revocation by the caretaker relative; or

iii. the child no longer resides with the caretaker relative.

d. If the child stops living with you, you shall notify anyone to whom you have given this affidavit.

History: En. Sec. 3, Ch. 442, L. 2007; amd. Sec. 1, Ch. 149, L. 2009; amd. Sec. 4, Ch. 211, L. 2011.

CHAPTER 6

SCHOOL DISTRICTS

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Chapter Cross-References

County Commissioners' authority to divide county into school districts, 7-5-2103.
Interlocal Cooperation Commission, Title 7, ch. 11, part 2.
Model integrated pest and pesticide management safety program, Title 80, ch. 8, part 4.

Part 1
School Districts — General Provisions

20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of 20-6-701 to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in 20-6-701 through 20-6-703.

(3) An elementary district is known as "District No....., ... County" and a high school district, except a high school district where a county high school is operated, is known as "High School District No....., ... County". A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) As used in this title, unless the context clearly indicates otherwise, a county high school is a high school district that has not unified with an elementary district under 20-6-312.

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501; amd. Sec. 6, Ch. 555, L. 1991; amd. Sec. 14, Ch. 219, L. 1997.

Cross-References

Powers and duties of district trustees, 20-3-324.
K-12 school district defined, 20-6-701.
School bonds, Title 20, ch. 9, part 4.

20-6-102. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

History: En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.

20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record that plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in the superintendent's office and is responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, the superintendent shall change, harmonize, and describe the boundaries accurately and shall make a report of the boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, the boundaries are the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504; amd. Sec. 301, Ch. 56, L. 2009.

20-6-104. Moratorium on creation of new district — exceptions. (1) Except as provided in subsections (2) and (3), a school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of 20-6-326, the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

(3) The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704.

History: En. Sec. 56, Ch. 633, L. 1993; amd. Sec. 2, Ch. 285, L. 1995; amd. Sec. 15, Ch. 219, L. 1997; amd. Sec. 2, Ch. 194, L. 2007.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) Except as provided in 20-6-214, 20-6-215, 20-6-308, and 20-6-322, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(a) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(b) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(c) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(d) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(2) When a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 1 full fiscal year unless the county superintendents have agreed in writing.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, on request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost;

(iii) travel time of students; and

(iv) whether there are isolated pupils in the territory proposed for transfer; and

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred if the transfer is approved and on the taxpayers of the school district to which the territory is to be transferred if the transfer is rejected;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases in which the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretional levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section. The county superintendent shall notify the department of revenue of the approval of a petition to transfer territory from one school district to another.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section.

(12) If a petition to transfer territory is granted under this section, for the 3 years immediately following the transfer:

(a) the taxable value of territory transferred must be divided equally between the school district from which the territory is transferred and the school district to which the property is transferred;

(b) when certifying taxable values pursuant to 15-10-202, the department of revenue shall include half of the certified value of the transferred territory in each school district's certified taxable value;

(c) each school district shall calculate the mills required for its district operational levies, as defined in 20-6-106, based on the certified taxable value provided under subsection (12)(b) of this section; and

(d) when levying taxes for district operational levies pursuant to 20-9-142, the county commissioners shall fix and levy one-half of the number of mills for each district's operational levies on the full taxable value of all property within the transferred territory.

(13) (a) When a petition to transfer territory is granted for a school district that has paid a reconciliation payment to another school district under 20-6-108:

(i) the school district to which the territory is transferred shall budget and impose a levy for 3 consecutive years following the transfer to generate revenue equal to the most recent reconciliation payment it received from the district from which the territory is transferred; and

(ii) the school district imposing the levy shall deposit the revenue in its tuition fund and pay the district from which the territory is transferred an amount equal to the revenue raised in subsection (13)(a)(i) for 3 consecutive years following the transfer, with at least half of the annual payment made by December 31 and the remainder made by June 15 of the same fiscal year.

(b) The school district from which territory is transferred shall deposit the received payment in its flexibility fund or allocate it among its budgeted funds as determined by the trustees.

History: En. Sec. 1, Ch. 151, L. 2003; amd. Sec. 1, Ch. 284, L. 2007; amd. Sec. 1, Ch. 305, L. 2009; amd. Sec. 5, Ch. 735, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 5, Ch. 735, L. 2025. Amendment effective May 13, 2025.

The amendment to this section made by sec. 14, Ch. 593, L. 2025, was rendered void by sec. 8, Ch. 735, L. 2025, a coordination section.

Applicability: Section 9, Ch. 735, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-106. Definitions. For the purposes of 20-6-105 through 20-6-109, the following definitions apply:

(1) "Advisory capacity" has the same meaning as provided in 2-15-102.

(2) (a) "District operational levies" means property tax levies imposed on the property of a school district in support of a school district's budgeted operations. The term includes levies for all school district budgeted funds except the debt service fund.

(b) The term does not include countywide school levies.

(3) "Isolated pupil" means a pupil who is enrolled and admitted in a nonresident district contiguous to the pupil's resident school district under conditions specified in 20-5-321 and who is unable to access onsite services of a resident school district.

(4) "Reconciliation payment" means payment provided for in 20-6-107 from a resident school district to reimburse a school district of attendance for educating an isolated pupil of the resident school district.

(5) "Resident school district" means the school district where an isolated pupil maintains legal residence as defined in 1-1-215.

(6) "School district" means a school district created under Title 20, chapter 6.

(7) "School district of attendance" means the school district where the isolated pupil is enrolled, admitted, and receiving onsite instruction.

(8) "Unable to access onsite services of a resident school district" means a case in which a pupil resides in a location in which, because of geographic conditions between the pupil's home and the school that the pupil would attend within the resident school district, it is impractical to access onsite programs in the resident school district, based on a travel time of more than 60 minutes under normal weather conditions over a publicly owned and maintained road using the shortest passable route while complying with all applicable speed limits to the school the pupil would attend in the resident school district.

History: En. Sec. 1, Ch. 735, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 735, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Applicability: Section 9, Ch. 735, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-107. Qualification for reconciliation payment — petition to qualify. (1) A school district that has enrolled and admitted an isolated pupil is qualified for a reconciliation payment as provided in this section when the isolated pupil is a resident of a contiguous school district that has a taxable value of at least $100 million and a taxable value per-ANB that is greater than 1.5 times the taxable value per-ANB in the school district of attendance.

(2) On payment of a processing fee of $100 to the county superintendent of the county in which the resident school district of an isolated pupil is located, a school district that meets the requirements of subsection (1) may annually petition to qualify for a reconciliation payment calculated pursuant to 20-6-108. To qualify for a reconciliation payment in the subsequent fiscal year, the school district shall file a petition with the county superintendent no later than June 1. The petition must include supporting evidence for the qualification of the school district of attendance for a reconciliation payment, including the number of full-time equivalent isolated pupils who were enrolled and admitted to the school district of attendance and receiving onsite instruction in the current school year.

(3) On receipt of a petition for a reconciliation payment, the county superintendent shall undertake a reasonable inquiry to assess the validity of the petition and eligibility for the reconciliation payment. The county superintendent shall exercise their best judgment and make a determination based on available and credible evidence, documentation, and applicable laws and policies. The county superintendent shall afford deference to the petitioner's assertions, ensuring that the evaluation process remains fair, transparent, and consistent with established criteria. The county superintendent may utilize resources and expertise from the office of public instruction, the department of revenue, and the department of transportation to verify the credibility of the evidence presented and to better ascertain the facts surrounding the petition.

(4) The county superintendent shall complete the inquiry and communicate the findings and determination, including a designation of the number of full-time equivalent isolated pupils enrolled in the school district of attendance, to the petitioner and the resident school district within 30 calendar days from the date of receipt of the petition. If further information or clarification is required to make an informed determination, the county superintendent may request additional documentation or engage in dialogue with the petitioner within this timeframe.

(5) An affected school district that disagrees with the county superintendent's determination may appeal to the district court by filing a verified petition with the court clerk and serving a copy of the petition on the county superintendent. The petition must clearly outline the objections of the school district to the basis of the county superintendent's determination and the objective criteria set forth in 20-6-106 through 20-6-109. Filing and serving the petition stays the county superintendent's decision until the court reaches a final determination on the matter. The court shall schedule a hearing at the earliest possible convenience. The court shall review the record and determine whether the county superintendent's decision constituted an abuse of discretion. The proceedings must be summary and informal, and the court's decision must be considered final.

History: **En. Sec. 2, Ch. 735, L. 2025.**

Compiler's Comments

Effective Date: Section 7, Ch. 735, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Applicability: Section 9, Ch. 735, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-108. Proportional reconciliation of taxable valuation — reimbursement for isolated pupils. (1) The resident school district shall impose a levy and make a reconciliation payment to the school district of attendance as calculated in this section when a petition under 20-6-107 has been granted to a school district of attendance by the applicable county superintendent.

(2) Following approval of the petition and not later than the first Tuesday in September, the school district of attendance shall notify the resident school district of the mills budgeted to be imposed by the school district of attendance for district operational levies pursuant to the final budget adopted by the school district of attendance in compliance with 20-9-131.

(3) The resident school district shall calculate and impose levies on all of its taxable value sufficient to generate the amount of the reconciliation payment. The reconciliation payment must be incorporated into the tuition budget of the district of residence. The amount of the reconciliation payment must be calculated by:

(a) multiplying the number of full-time equivalent isolated pupils of the resident school district in the prior year as approved by the county superintendent pursuant to 20-6-107(4) by the mill value per-ANB determined pursuant to subsection (4) of this section; and

(b) multiplying the result of subsection (3)(a) by the number of mills reported by the school district of attendance under subsection (2).

(4) The mill value per-ANB for the resident school district under subsection (3)(a) must be calculated by the office of public instruction and reported by May 1 with the information required in 20-9-369(1)(a) to the resident school district and to the school district of attendance based on the certified taxable value of the resident school district for the prior school fiscal year divided by the resident school district's budgeted ANB in the prior school fiscal year.

(5) Revenue generated from the reconciliation payment levy imposed on the resident school district pursuant to subsection (4) must be deposited in the tuition fund of the resident school district and used solely for reconciliation payments to the school district of attendance.

(6) By December 31, the resident school district shall pay at least one-half of the reconciliation payment provided for in this section to the school district of attendance. The remaining obligation must be paid by June 15 of the same fiscal year.

(7) On receipt of the reconciliation payment, a school district of attendance shall deposit the payment in the school district's flexibility fund or any other budgeted funds in the discretion of the trustees.

History: En. Sec. 3, Ch. 735, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 735, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Applicability: Section 9, Ch. 735, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-109. Advisory council. (1) A school district with an enrollment of isolated pupils comprising 5% or more of its budgeted ANB shall establish an advisory council dedicated to fostering open dialogue and collaboration on matters that impact isolated pupils and other nonresident pupils from the areas in which isolated pupils reside. The council shall serve in an advisory capacity as a vital forum for listening to and voicing the concerns and insights of parents, guardians, and community members regarding the educational experiences of isolated pupils.

(2) The board of trustees of the school district of attendance shall appoint members to the advisory council following a public notice process that invites community participation and expressions of interest. The size of the council, the terms of service, and specific responsibilities must be outlined by district policy. A majority of the council's members must be parents or legal guardians of isolated pupils. The board may appoint other stakeholders at its discretion.

(3) The agenda for regular meetings of the board may include, at the council's request, a dedicated item for a report from the advisory council.

History: En. Sec. 4, Ch. 735, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 735, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Applicability: Section 9, Ch. 735, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-110. Student construction project — disclosure — immunity. (1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project

constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, "public education program" means a program operated by a public school or a public postsecondary institution.

History: **En. Sec. 1, Ch. 521, L. 2005.**

Part 2
Elementary School Districts

20-6-201. Elementary district classification. (1) Each elementary district shall have a classification of:

(a) first class, if it has a population of 6,500 or more;

(b) second class, if it has a population of 1,000 or more but less than 6,500; or

(c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district must be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare the district's classification to be changed in accordance with the determined population, except that the classification of an elementary district may not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions must be filled in the manner provided for in 20-3-302.

History: **En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 137, L. 1993.**

Cross-References

Election of trustees upon change of district classification, 20-3-302, 20-3-343.

Number of trustee positions in elementary districts, 20-3-341.

20-6-202. Time limitation for boundary changes. An elementary district may not be created and elementary district boundaries may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or

(3) two or more districts are reorganized in their entirety.

History: **En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505; amd. Sec. 7, Ch. 237, L. 2001; amd. Sec. 5, Ch. 466, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-203. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.**

20-6-204. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.**

20-6-205. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.**

20-6-206. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.**

20-6-207. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.**

20-6-208. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.**

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district or districts of the county or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county when:

(a) a school has not been operated by a district for at least the minimum aggregate hours under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of aggregate hours as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for the minimum aggregate hours or a lesser number of aggregate hours than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979; amd. Sec. 5, Ch. 430, L. 1997; amd. Sec. 10, Ch. 138, L. 2005; amd. Sec. 8, Ch. 510, L. 2005.

Cross-References

Trustees of district affected by boundary change, 20-3-312.
School isolation, 20-9-302.
Purpose and establishment of nonoperating fund, 20-9-505.
Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-210. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

20-6-211. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

20-6-212. Repealed. Sec. 80, Ch. 130, L. 2005.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

20-6-213. Repealed. Sec. 7, Ch. 151, L. 2003.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979; amd. Sec. 1, Ch. 145, L. 1991; amd. Sec. 1, Ch. 517, L. 1991; amd. Sec. 1, Ch. 403, L. 1997.

20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as set forth in 20-6-105(6).

History: En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1; amd. Sec. 3, Ch. 151, L. 2003.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. The review and any recommended boundary changes must include information that the territory proposed for transfer complies with the provisions of 20-6-105(1) through (3) and must be presented by the superintendent at a hearing conducted under 20-6-105(6). If the superintendent orders a boundary change after the hearing, the superintendent shall forward copies of the review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2; amd. Sec. 4, Ch. 151, L. 2003.

20-6-216. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517; amd. Sec. 1, Ch. 337, L. 1981; amd. Sec. 1, Ch. 430, L. 1981; amd. Sec. 1, Ch. 371, L. 1987.

20-6-217. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518; amd. Sec. 2, Ch. 430, L. 1981; amd. Sec. 2, Ch. 371, L. 1987.

20-6-218. Relocation of elementary school within district. The trustees of an elementary district may relocate an elementary school that is currently operating within the district if the relocation will be more convenient for the majority of the pupils attending. The provisions of 20-6-502 relating to opening or reopening a school do not apply. The provisions of 20-6-603 apply if the new site has not been previously approved as required by 20-6-603.

History: En. Sec. 1, Ch. 281, L. 1989.

Part 3
High School Districts

20-6-301. High school district classification. The classification of a high school district must be the same as the classification of the elementary district (20-6-201) where the high school building is located. If there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district described in 20-6-201 in which the operating high school building that was first constructed is located. Whenever the classification of such elementary district is changed, the classification of a high school district must be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions must be filled by the appointment of the county superintendent, and those positions are subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances may not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 91, L. 2005.

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Number of trustee positions in elementary and high school districts, 20-3-341, 20-3-351.

Request and determination of number of additional high school district trustee positions, 20-3-352.

20-6-302. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.

20-6-303. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.

20-6-304. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521; amd. Sec. 9, Ch. 617, L. 1983.

20-6-305. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

20-6-306. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county.

History: **En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524; amd. Sec. 9, Ch. 510, L. 2005.**

Cross-References

School fiscal year, 20-1-301.
School isolation, 20-9-302.
Purpose and establishment of nonoperating fund, 20-9-505.
Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-308. Organization of joint high school district. The boundaries of a high school district that encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. The high school district boundary change must be a transfer of all the territory located in another county's portion of the same joint elementary district and must be made pursuant to the procedures provided in 20-6-105.

History: **En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525; amd. Sec. 5, Ch. 151, L. 2003.**

20-6-309. Repealed. Sec. 7, Ch. 151, L. 2003.

History: **En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.**

20-6-310. Repealed. Sec. 13, Ch. 617, L. 1983.

History: **En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.**

20-6-311. Repealed. Sec. 22, Ch. 219, L. 1997.

History: **En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528; amd. Sec. 10, Ch. 617, L. 1983.**

20-6-312. County high school unification. (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. The territory of an existing joint high school district must remain a part of the joint high school district.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located must be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the high school district where the county high school is located who are qualified to vote under the provisions of 20-20-301 petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition must be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition must be substantially in the following form:

"OFFICIAL BALLOT
COUNTY HIGH SCHOOL UNIFICATION ELECTION

Shall.... County High School be unified with District No....., ... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.
☐ AGAINST the unification of the county high school."

(4) When the county superintendent receives the election certificate from the trustees of the county high school, the county superintendent shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next July 1, if a majority of those electors voting at the election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, the county superintendent shall order the disapproval of the unification proposition.

History: **En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538; amd. Sec. 16, Ch. 219, L. 1997.**

Cross-References

Mail ballot elections prohibited, 13-19-104.
School elections, Title 20, ch. 20.

20-6-313. Transactions after approved county high school unification. (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions must be completed on or before the July 1 when the unification becomes effective:

(a) The county high school trustees, who do not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(b) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes the areas, the county superintendent shall appoint additional high school district trustees from each area, who shall hold office until a successor is elected at the next regular school election and qualified.

(c) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district is responsible for the maintenance of the debt service fund for the bonds. It is the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: **En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539; amd. Sec. 17, Ch. 219, L. 1997.**

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-314. Time limitations for boundary changes. A high school district may not be created and a high school district boundary may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are reorganized in their entirety.

History: **En. Sec. 1, Ch. 617, L. 1983; amd. Sec. 10, Ch. 22, L. 1997; amd. Sec. 2, Ch. 403, L. 1997; amd. Sec. 8, Ch. 237, L. 2001; amd. Sec. 6, Ch. 466, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-315. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 2, Ch. 617, L. 1983.**

20-6-316. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 3, Ch. 617, L. 1983.**

20-6-317. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 4, Ch. 617, L. 1983.**

20-6-318. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 5, Ch. 617, L. 1983.**

20-6-319. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 6, Ch. 617, L. 1983.**

20-6-320. Repealed. Sec. 7, Ch. 151, L. 2003.

History: **En. Sec. 7, Ch. 617, L. 1983; amd. Sec. 1, Ch. 299, L. 1987; amd. Sec. 2, Ch. 517, L. 1991; amd. Sec. 3, Ch. 403, L. 1997.**

20-6-321. Repealed. Sec. 12, Ch. 510, L. 2005.

History: **En. Sec. 8, Ch. 617, L. 1983; amd. Sec. 2, Ch. 15, L. 1985.**

20-6-322. Boundary adjustments in high school districts. The trustees of a high school district may, by resolution, request a change in the boundaries between their district and an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as provided in 20-6-105(6).

History: **En. Sec. 5, Ch. 403, L. 1997; amd. Sec. 6, Ch. 151, L. 2003.**

20-6-323 and 20-6-324 reserved.

20-6-325. Repealed. Sec. 22, Ch. 219, L. 1997.

History: **En. Sec. 1, Ch. 585, L. 1985; amd. Sec. 1, Ch. 226, L. 1987; amd. Sec. 3, Ch. 371, L. 1987.**

20-6-326. Procedure for expansion of elementary school district into K-12 school district — trustee resolution. (1) An existing elementary district that is not part of a unified school system or governed by a joint board with a high school district may expand into a K-12 district under the procedures outlined in this section only if the elementary district's ANB, as calculated under the provisions of 20-9-311, is at least 1,000.

(2) The expansion to a K-12 district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition of expanding the elementary school district into a K-12 district. The trustees of an existing elementary district with an ANB of at least 1,000 may not pass a resolution for expansion more than one time within a 5-year period.

(3) (a) If the proposition for the expansion is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, for a period of 2 years from the date of the certification of the election the elementary trustees have the authority to propose to the electors of the elementary district:

(i) a transition costs levy pursuant to 20-9-502; and

(ii) a general obligation bond pursuant to Title 20, chapter 9, part 4, for the purpose of building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school to accommodate high school students.

(b) The bond limitations pursuant to 20-9-406 imposed on a district proposing a bond under subsection (3)(a) must be calculated on the limits for a K-12 district with the high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.

(c) A bond approved under subsection (3)(a) becomes a bond of, and may not be issued until the creation of, the K-12 district formed pursuant to subsection (4).

(d) A district that issues a bond under this subsection (3) is eligible for facility reimbursements and advances pursuant to 20-9-366 through 20-9-371 that, until the new high school has enrolled students in all grades and has established an actual ANB for budgeting purposes, must be based on an estimated high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.

(e) Until the county superintendent orders the creation of a new high school district and attachment of the expanding elementary district to form a new K-12 district pursuant to subsection (4), the existing high school district remains intact for all purposes.

(4) If elementary electors approve a bond pursuant to subsection (3), on July 1 following the approval of the bond the county superintendent shall order the creation of a new high school district with identical boundaries to the expanding elementary district and the immediate attachment of the expanding elementary district to form a K-12 district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district. The trustees of the expanding elementary district must be designated as the trustees of the new K-12 district.

(5) Prior to the first school fiscal year in which the K-12 district will enroll students in a particular high school grade, the K-12 trustees shall prepare operating budgets for the new high school according to the school budgeting provisions of this title, except that:

(a) the ANB for any inaugural grades for the high school program of the K-12 district must be estimated by the trustees and may not exceed the number resulting from dividing the highest budgeted ANB of the elementary program in the preceding 3 fiscal years by 9 and multiplying the result by the number of grades in which the high school will enroll students for the first time in the ensuing school year;

(b) the number of quality educators for the high school program must be estimated by the trustees and may not exceed the number resulting from dividing the ANB estimated under subsection (5)(a) by 10;

(c) the taxable value for budgeting purposes of both the elementary and high school programs of the K-12 district must be based on the taxable value as most recently determined by the department of revenue;

(d) the general fund budget adopted by the trustees must be based on only the basic entitlement, the total quality educator and qualified staff payment, and the budget components derived from ANB counts; and

(e) the district's BASE aid for the upcoming year must be based on the general fund budget adopted by the trustees for the upcoming school year.

(6) Until the first school year in which the K-12 school district enrolls high school students in all grades and for a period of time not to exceed 6 years following the creation of the K-12 district:

(a) the high school district shall provide high school instruction to high school students of the K-12 district in any grades in which the K-12 district is not enrolling students;

(b) the K-12 district shall be responsible for providing transportation for its students enrolled in the high school district pursuant to subsection (6)(a), may establish a transportation budget for this purpose, and may receive state and county reimbursements under Title 20, chapter 10; and

(c) the K-12 district shall pay the high school district 20% of the per-ANB maximum rate established in 20-9-306 for each of its students enrolled in the high school district with one-half of the amount due by December 31 of the year following the year of attendance and the remainder due no later than June 15 of the year following the year of attendance. The K-12 trustees shall establish a tuition fund and levy to fund these payments.

(7) (a) Bonded indebtedness of the high school district that is outstanding as of the date of creation of the K-12 district must remain secured by and be the indebtedness of the original territory against which the bonds of the high school district were issued and must be paid by tax levies against the original territory.

(b) Bonded indebtedness of the high school district that is issued by the high school district following the creation of the K-12 district is secured by the territory of the high school district as of the date of issuance of the high school district bonds and must be paid by tax levies against the territory of the high school district. However, if bonds of the high school district were approved at a bond election conducted before the creation of the K-12 district, all bonds of the high school district issued by the high school district under the bond election authority must remain secured by and be the indebtedness of the territory of the high school district as of the date the bond authority was approved by voters and must be paid by tax levies against that territory.

(c) Bonded indebtedness of the K-12 district is secured by the territory of the K-12 district as of the date of issuance of the K-12 district bonds and must be paid by tax levies against the territory of the K-12 district.

(d) Bonded indebtedness of the elementary district that is outstanding as of the date of creation of the K-12 district must become upon the date of creation of the K-12 district the bonded indebtedness of the K-12 district and must be secured by the territory of the K-12 district and paid by tax levies against the territory of the K-12 district. The debt service on the bonds must be allocated to the elementary program of the K-12 district.

(e) Bonded indebtedness of the high school district or the K-12 district that is subsequently affected by a later reorganization of the high school district or the K-12 district is governed by the provisions of Title 20, chapter 6, part 4.

(8) When a K-8 district expands to a K-12 district as provided for in this section, a principal, teacher, or other certified employee of the original high school district who has a right of tenure under Montana law must be given preference in hiring for a vacant position in the new K-12 district for which the employee is qualified with the required certification endorsements.

History: En. Sec. 1, Ch. 194, L. 2007; amd. Sec. 1, Ch. 205, L. 2017; amd. Sec. 2, Ch. 551, L. 2021; amd. Sec. 2, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Part 4
School District Reorganization

20-6-401. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985; amd. Sec. 4, Ch. 337, L. 1989; amd. Sec. 13, Ch. 11, Sp. L. June 1989.

20-6-402. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

20-6-403. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

20-6-404. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

20-6-405. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

20-6-406. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

20-6-407. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

20-6-408. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

20-6-409 reserved.

20-6-410. Tenure protected — hiring preference for employees. (1) Whenever two or more school districts reorganize or join through annexation to form a single district in the manner provided for in Title 20, chapter 6, a principal, teacher, or other certified employee of the school districts who has a right of tenure under Montana law must be given absolute preference in hiring for the first school fiscal year for any vacant position with the reorganized or enlarged district for which the employee is qualified with the required certification endorsements. Upon acceptance of a position, the certified employee continues to have tenure in the reorganized or enlarged district and the board of trustees of the reorganized or enlarged school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of a school district that reorganizes or joins another district through annexation must be given preference in hiring for the first school fiscal year for any vacant position with the reorganized or enlarged district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 1, Ch. 497, L. 1991; amd. Sec. 7, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries remains the indebtedness of the original territory against which the bonds were issued and must be paid by levies on the original territory, except when districts are reorganized with the mutual assumption of bonded indebtedness or when a district is annexed with a joint assumption of the annexing district's bonded indebtedness. Any money to the credit of the debt service fund of a district when its boundaries are changed must be used to pay the existing bond principal and interest of the original territory issuing the bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529; amd. Sec. 2, Ch. 60, L. 2009; amd. Sec. 8, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 466, L. 2025. Amendment effective July 1, 2025.

Cross-References

Redemption of bonds — investment of debt service fund money, 20-9-441.

20-6-412. Property tax valuation after district boundary change. The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the fourth Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530; amd. Sec. 4, Ch. 133, L. 1993.

20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt. Whenever a district ceases to exist in any manner prescribed in this title, except when districts are reorganized under 20-6-423, the cash on hand to the credit of the funds of the district and the debts of the former district must be allocated in the following manner:

(1) Any cash to the credit of the district must be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund must be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash must be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash must be prorated between the districts on the basis of the taxable value of the territory assumed by each district as determined by the county superintendent.

(3) If any tuition debt remains as an obligation of the district, the tuition debt is the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the newly formed or annexing district. The tuition debt must be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.

(4) If any debts, other than bonded indebtedness and tuition, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1), the debts must be assigned in the same manner prescribed for the transfer of cash under subsection (2).

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532; amd. Sec. 1, Ch. 127, L. 1989; amd. Sec. 1, Ch. 214, L. 1999; amd. Sec. 9, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-414. Cash disposition when districts reorganize. Whenever two or more districts are reorganized without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, must be credited or debited to the same types of funds of the newly formed district as the funds from which they were transferred by the county treasurer. In addition, when two or more districts are reorganized with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also must be transferred to a similar fund of the newly formed district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533; amd. Sec. 3, Ch. 60, L. 2009; amd. Sec. 10, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-415. Repealed. Sec. 22, Ch. 219, L. 1997.

History: **En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.**

20-6-416. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: **En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.**

20-6-417. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: **En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.**

Cross-References

Power of trustees over property, 20-3-324, 20-6-602.

20-6-418. Surrender of records when district ceases to exist. Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

History: **En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.**

20-6-419 and 20-6-420 reserved.

20-6-421. Conditions for district annexation. (1) An elementary district may be annexed to a contiguous elementary district under the provisions of 20-6-422 when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, to a first-class district, or to a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or to a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) A high school district may be annexed to a contiguous high school district or a K-12 school district may be annexed to a contiguous K-12 school district under the provisions of 20-6-422 when:

(a) a third-class district is annexed to a first-class district or to a second-class district; or

(b) a second-class district is annexed to a first-class district.

History: **En. Sec. 1, Ch. 510, L. 2005.**

20-6-422. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of 20-6-421 is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in the district conducting the election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of the bonded indebtedness of the annexing district by the owners of all taxable real and personal property in the territory of the district to be annexed. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition.

History: En. Sec. 2, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005; amd. Sec. 4, Ch. 60, L. 2009.

20-6-423. District reorganization. (1) (a) Any two or more contiguous elementary school districts may reorganize to form a single elementary district.

(b) Any two or more contiguous high school districts may reorganize to form a single high school district.

(c) Any two or more contiguous K-12 school districts may reorganize to form a single K-12 school district.

(d) Any two or more school districts may reorganize to form a single K-12 school district.

(e) The reorganization must be conducted as provided in this section.

(2) (a) A reorganization proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a reorganization proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a reorganization proposition involving their district.

(b) (i) When two or more districts reorganize under subsections (1)(a) through (1)(c), the resolution or petition must state whether the reorganization is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the reorganization. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the reorganization proposition may not be considered further.

(ii) When two or more districts reorganize under subsection (1)(d), any bonded indebtedness of a district remains an obligation of the original territory of the district.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the reorganization proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the reorganization proposition to call a reorganization election to be held no later than December 31 preceding the school year in which the reorganization is to become effective. If the districts involved in the reorganization proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a reorganization election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be reorganized are to jointly assume the bonded indebtedness of each district involved in the reorganization, the ballots must read, after stating the reorganization proposition, "FOR reorganization with assumption of bonded indebtedness" and "AGAINST reorganization with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be reorganized are not to jointly assume the bonded indebtedness of each district involved in the reorganization, the ballots must read, after stating the reorganization proposition, "FOR reorganization without assumption of bonded indebtedness" and "AGAINST reorganization without assumption of bonded indebtedness". The reorganization proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the reorganization proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a reorganization proposition, the appropriate county superintendent shall determine if the reorganization proposition has been approved in each district. If each district has approved the reorganization proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the reorganization of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for reorganization with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the reorganized district;

(ii) specify the number of the reorganized district;

(iii) for a reorganization under subsection (1)(d), order any boundary changes necessary to create the K-12 district; and

(iv) establish an interim board of trustees for the reorganized district as provided in 20-6-424. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the reorganization proposition is located and to the trustees of each district incorporated in the reorganization order.

(8) If any district included in the reorganization proposition disapproves the reorganization proposition, the reorganization of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the reorganization proposition.

History: En. Sec. 3, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005; amd. Sec. 11, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-424. Interim governance of reorganized district. (1) Upon passage of a reorganization proposition under the provisions of 20-6-423, an interim board of trustees made up of all of the members of the boards of trustees of the districts that reorganized shall serve as the trustees for the newly formed district from the date of the reorganization order until the newly elected board of the newly formed district is organized under 20-3-321. The interim board of trustees shall elect a presiding officer from among its members.

(2) The trustees of each district incorporated in the reorganization order shall continue to perform those duties related to the operation of their individual districts until the effective date of the reorganization. The interim board of trustees shall perform those duties related to the formation of and transition to the newly formed district, including but not limited to:

(a) calling an election of the new board of trustees for the newly formed district to be held on the regular election day preceding the effective date of the reorganization; and

(b) if necessary, calling an election under 20-9-353 for the ensuing budget year of the newly formed district.

(3) At the next regular school election following the reorganization election, trustees for the newly formed district must be elected in accordance with the election provisions of Title 13 and Title 20. The term of office is 3 years, except that the initial terms of the newly elected trustees must be selected by lot in order to comply with the provisions of 20-3-302.

(4) The interim board of trustees must be dissolved upon the organization of the newly elected trustees pursuant to 20-3-321.

History: En. Sec. 4, Ch. 510, L. 2005; amd. Sec. 12, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 466, L. 2025. Amendment effective July 1, 2025.

Part 5
Opening and Closing of Schools

Part Cross-References

Power of trustees to open and close schools, 20-3-324(7).

20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of a district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school is known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination of grades 4 through 8 that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school is operated by the district, grades 7 and 8 or their equivalents may not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools are designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school that comprises the work of grades 10 through 12 or their equivalents and that is operated in conjunction with a junior high school;

(c) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2); amd. Sec. 10, Ch. 658, L. 1987; amd. Sec. 18, Ch. 219, L. 1997; amd. Sec. 4, Ch. 343, L. 1999.

20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when the opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least two pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school. The petition must identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend the school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of the school would be two or more. If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.

(3) The county superintendent shall present the petition, the trustees' approval, and the county superintendent's findings on the probable ANB to the board of county commissioners for their consideration. The board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for the school is less than two ANB. In all other cases, the board may approve or disapprove the requested opening or reopening of the elementary school.

(4) (a) If the board approves a school opening or reopening, the county superintendent shall send a copy of the approval, along with the petition, the trustees' approval, and the county superintendent's estimate of the probable ANB, to the superintendent of public instruction. Except under the circumstances described in subsection (4)(b), the trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school by the fourth Monday of June. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for the school and the ANB amount must be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. An ANB amount may not be approved for the ensuing school fiscal year for an opening or reopening school when the request for the school has not been received by the superintendent of public instruction by June 1.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school may open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of 20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602; amd. Sec. 1, Ch. 105, L. 2001; amd. Sec. 21, Ch. 237, L. 2001.

Cross-References
ANB defined, 20-1-101.
Calculation of average number belonging, 20-9-311.
Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-503. Opening or reopening of a high school. (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

(a) their reasons why the high school should be opened or reopened;
(b) the probable enrollment of such high school;
(c) the distance and road conditions of the route to neighboring high schools;
(d) the taxable value of the district;
(e) the building and equipment facilities available for such high school;
(f) the planned course of instruction for such high school;
(g) the planned methods of complying with high school standards of accreditation; and
(h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

Cross-References
ANB defined, 20-1-101.
School fiscal year, 20-1-301.
Calculation of average number belonging, 20-9-311.
Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-504. Opening of a junior high school. (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.

Cross-References

ANB defined, 20-1-101.
Calculation of average number belonging, 20-9-311.
Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-505. Opening a junior high school when high school district operates a county high school. (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.

Cross-References

Powers of joint board of trustees, 20-3-362.
Circumstances under which regular average number belonging may be increased, 20-9-313.
School elections, Title 20, ch. 20.

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied to prorate the BASE funding program amount between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606; amd. Sec. 14, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 633, L. 1993.

Cross-References

ANB defined, 20-1-101.
Powers of joint board of trustees, 20-3-362.
Calculation of average number belonging, 20-9-311.

20-6-507. Opening of middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: **En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.**

Cross-References

ANB defined, 20-1-101.
Calculation of average number belonging, 20-9-311.

20-6-508. Kindergarten through grade 12 system. Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: **En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).**

20-6-509. School closure. Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

History: **En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.**

Cross-References

Powers of joint board of trustees, 20-3-362.
Nonoperating fund, 20-9-505, 20-9-506.

Part 6
School Property

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.
Sale of county property to school district, 7-8-2216.
Use of district property by home guard, 10-1-703.
School officers not to act as agents, 20-1-201.
Conflict of interest, 20-1-205.
Liability of parents for pupil's damage to property, 20-5-201, 40-6-237, 40-6-238.
Authority of Board of Public Education when school property used, 20-7-804.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.
Trustees to execute all contracts, 20-9-213.
Additional levy for furnishing school facilities, 20-9-353.
Nonoperating fund for maintenance of district property, 20-9-505.
Public school fund and grants to schools, Title 20, ch. 9, part 6.

20-6-601. Power to accept gifts. All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

History: **En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).**

Cross-References

Authority to request, accept, and disburse money, 20-3-208.
Acceptance and expenditure of federal money for state, 20-9-603.
Gifts, legacies, devises, and administration of endowment fund, 20-9-604.

20-6-602. Trustees' power over property. The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: **En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.**

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required. (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Except as provided in 20-6-604 and 20-6-621, action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(c) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

(3) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204; amd. Sec. 15, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 633, L. 1993; amd. Sec. 1, Ch. 276, L. 2001; amd. Sec. 2, Ch. 640, L. 2023.

Cross-References

Mail ballot elections prohibited, 13-19-104.
Bond issues for certain purposes, 20-9-403.
Purpose and authorization of a building reserve fund by election, 20-9-502.
Budgeting, tax levy, and use of building reserve fund, 20-9-503.
Building fund to be credited when property sold, 20-9-508.
Lease or sale of district property, 20-15-107.
School elections, Title 20, ch. 20.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure. (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall provide notice of the resolution in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or

dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fund, building fund, general fund, or other appropriate fund, at the discretion of the trustees.

History: **En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205; amd. Sec. 1, Ch. 150, L. 1987; amd. Sec. 3, Ch. 568, L. 1991; amd. Sec. 1, Ch. 144, L. 1997.**

Cross-References

Separate debt service fund maintained by County Treasurer, 20-9-440.
Building fund to be credited when property sold, 20-9-508.
School election notice, 20-20-204.

20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of the intent to repossess the land, and the trustees shall have 1 year after receipt to remove any buildings or improvements placed upon the land by the district. The trustees' failure to remove the buildings or improvements within that time constitutes a forfeiture of the buildings or improvements. Before the owner or claimant has the right to give notice of repossession, the district's intention to permanently cease using the land must have been established by resolution of the trustees and a vote of the district's electors.

History: **En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202; amd. Sec. 302, Ch. 56, L. 2009.**

Cross-References

Right of reentry, Title 70, ch. 16, part 4.

20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building must be conducted under the provisions of 20-9-204 or Title 18, chapter 2, part 5.

History: **En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210; amd. Sec. 9, Ch. 574, L. 2005.**

Cross-References

Power of trustees to execute contracts, 20-9-213.

20-6-607. Leasing district property and disposition of any rentals. The trustees of a district may rent or lease any buildings, land, facilities, or personal property of the district under the terms specified by the trustees. Any money collected for the rental or lease may, in the discretion of the trustees, be used for any proper school purpose and deposited in any fund as the trustees consider appropriate.

History: **En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211; amd. Sec. 2, Ch. 462, L. 2005.**

Cross-References

Apportionment of rents from school lands, Art. X, sec. 5, Mont. Const.
Lease or rental agreement fund, 20-9-509.
Oil and gas leases, 82-10-201 through 82-10-204.

20-6-608. Authority and duty of trustees to insure district property. (1) The trustees of a district shall insure all real and personal property of the district. The trustees shall include the cost of insurance in the general fund budget of the district.

(2) Proceeds received from an insurance settlement on real or personal property insured by the district may, at the discretion of the trustees, be deposited in a fund considered appropriate by the trustees.

History: **En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212; amd. Sec. 16, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 343, L. 1999.**

Cross-References

School district may not levy tax, 2-9-212.

20-6-609. Trustees' authority to acquire property by lease-purchase agreement. The trustees of a district may acquire real and personal property by an agreement to lease for up to 7 years for personal property and for up to 15 years for real property with an option to purchase. The terms of the lease must comply with 20-6-625. If real property is acquired, the trustees shall comply with 20-6-603.

History: En. Sec. 1, Ch. 144, L. 1985; amd. Sec. 11, Ch. 22, L. 1997; amd. Sec. 1, Ch. 66, L. 2015.

Cross-References

Montana Procurement Act — local government adoption of provisions, 18-4-124.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.
Duties of trustees — contracts, 20-9-213.

20-6-610 through 20-6-620 reserved.

20-6-621. Selection of school sites — approval election. (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which a building reserve levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of labor and industry.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203; amd. Sec. 75, Ch. 575, L. 1981; amd. Sec. 1, Ch. 352, L. 1985; amd. Sec. 48, Ch. 418, L. 1995; amd. Sec. 67, Ch. 546, L. 1995; amd. Sec. 1, Ch. 79, L. 1997; amd. Sec. 1, Ch. 18, L. 1999; amd. Sec. 50, Ch. 483, L. 2001; amd. Sec. 3, Ch. 640, L. 2023.

Cross-References

Mail ballot elections prohibited, 13-19-104.
Building construction standards, Title 50, ch. 60.
Board of Land Commissioners, Title 77, ch. 1, part 2.

20-6-622. Review and approval of school building plans and specifications. (1) A school building, either publicly or privately owned or operated, in which students are housed or instructed may not be built, enlarged, or remodeled until the plans and specifications for construction have been submitted to and approved by the department of labor and industry or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) must show in detail the proposed construction of the building and must illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206; amd. Sec. 1, Ch. 274, L. 1983; amd. Sec. 2, Ch. 352, L. 1985; amd. Sec. 51, Ch. 483, L. 2001.

Cross-References

Building construction standards, Title 50, ch. 60.

20-6-623. Repealed. Sec. 15, Ch. 384, L. 1979.

History: En. Sec. 1, Ch. 49, L. 1973; R.C.M. 1947, 75-8206.1.

20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district may not make any payment under a contract for the construction of school facilities until the plans and specifications for the construction have been approved under the provisions of 20-6-622.

(2) A contractor, architect, trustee, or any other person, firm, or corporation who violates the provisions of 20-6-622, this section, or any regulation promulgated by the department of public health and human services or the department of justice is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: **En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 49, Ch. 418, L. 1995; amd. Sec. 68, Ch. 546, L. 1995.**

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.
Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease the buildings or land from the county, municipality, another district, or any person. The term of the lease may not exceed 15 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term approved by the qualified electors, but not exceeding 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: **En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209; amd. Sec. 2, Ch. 66, L. 2015.**

Cross-References

School fiscal year, 20-1-301.
School elections, Title 20, ch. 20.

20-6-626 through 20-6-629 reserved.

20-6-630. Repealed. Sec. 8, Ch. 188, L. 2013.

History: **En. Sec. 1, Ch. 132, L. 2011.**

20-6-631. When contracts for architectural services required. Whenever the trustees of a school district determine that the building, furnishing, repairing, or other work for the benefit of a school district exceeds $150,000 and requires architectural services under Title 37, chapter 65, the trustees of the school district shall contract for those services.

History: **En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815; amd. Sec. 1, Ch. 153, L. 1997.**

Cross-References

Architects on public buildings to be certified, 18-2-113.
Seal and signature of architect on plans, 18-2-114.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: **En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.**

20-6-633. Hiring for architectural services authorized. If the trustees determine pursuant to 20-6-631 that architectural services are necessary, the trustees shall hire a licensed architect for the architectural services as described by the school district's scope of the work. In the event that the trustees and the architect are unable to negotiate a fair and reasonable fee, the trustees may select another architect if the trustees again give reasonable notice of their selection.

History: **En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817; amd. Sec. 2, Ch. 153, L. 1997.**

20-6-634. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

History: **En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.**

Cross-References

Open meetings, Title 2, ch. 3, part 2.
Meetings and quorum, 20-3-322.

20-6-635. Contracts with Montana firms encouraged. The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

History: **En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.**

20-6-636. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsection (1), (2), or (3) of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.**

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

20-6-637 through 20-6-639 reserved.

20-6-640. Long-term loans. School districts that experience a disaster that destroys school property to the extent of rendering the property unfit for its present school use may apply for long-term loans for use in replacing school property under the provisions of Title 17, chapter 5, part 16.

History: **En. Sec. 1, Ch. 585, L. 1991.**

Cross-References

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.

Part 7
K-12 School Districts

20-6-701. K-12 school districts required — definition — procedure for creation — exception. (1) Except as provided in subsection (4), each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the context clearly indicates otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When the county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving federal impact aid funding, as provided in 20 U.S.C. 7701, et seq., if creation or continuation of a K-12 district has resulted in or will result in the loss of federal impact aid funding.

History: En. Sec. 1, Ch. 555, L. 1991; amd. Sec. 1, Ch. 194, L. 1993; amd. Sec. 12, Ch. 22, L. 1997; amd. Sec. 1, Ch. 95, L. 1997.

20-6-702. *(Temporary)* **Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax for elementary equalization and revenue for the elementary BASE funding program for the district must be determined in accordance with the provisions of 20-9-331, and the basic county tax for high school equalization and revenue for the high school BASE funding program for the district must be determined in accordance with 20-9-333;

(c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district's guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

(d) the levy authority limits under 20-9-502(3) and the corresponding state school major maintenance aid under 20-9-525 for a K-12 school district must be calculated separately for the K-12 school district's elementary and high school programs in the same manner as those limits and aid would be calculated if the K-12 school district consisted of a separate elementary and high school district.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324.

20-6-702. *(Effective July 1, 2026)* **Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax for elementary equalization and revenue for the elementary BASE funding program for the district must be determined in accordance with the provisions of 20-9-331, and the basic county tax for high school equalization and revenue for the high school BASE funding program for the district must be determined in accordance with 20-9-333;

(c) the BASE budget revenue requirements for a K-12 school district must be calculated separately. The BASE budget revenue requirements for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

(d) the levy authority limits under 20-9-502(3) and the corresponding state school major maintenance aid under 20-9-525 for a K-12 school district must be calculated separately for the K-12 school district's elementary and high school programs in the same manner as those limits and aid would be calculated if the K-12 school district consisted of a separate elementary and high school district.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324.

History: **En. Sec. 2, Ch. 555, L. 1991; amd. Sec. 9, Ch. 563, L. 1993; amd. Sec. 10, Ch. 633, L. 1993; amd. Sec. 13, Ch. 22, L. 1997; amd. Sec. 2, Ch. 404, L. 2017; amd. Sec. 1, Ch. 163, L. 2025; amd. Sec. 7, Ch. 424, L. 2025; amd. Sec. 3, Ch. 687, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 163, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 3, Ch. 687, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-6-703. Transitions after formation of K-12 school district. (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the county superintendent shall order the trustees to execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be used to determine the budget limitation for the ensuing school fiscal year pursuant to the calculations described in 20-9-308(1)(b).

History: **En. Sec. 3, Ch. 555, L. 1991; amd. Sec. 49, Ch. 633, L. 1993; amd. Sec. 3, Ch. 36, Sp. L. November 1993; amd. Sec. 4, Ch. 403, L. 1997; amd. Sec. 2, Ch. 163, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 163, L. 2025. Amendment effective July 1, 2025.

20-6-704. Dissolution of K-12 school district. (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or reorganizing the K-12 district's elementary or high school program with a contiguous school district or districts in an ensuing school fiscal year under the provisions of 20-6-422 or 20-6-423.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed to or reorganized with a contiguous district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation to or reorganization with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or reorganized with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not annexed to or reorganized with another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a reorganization proposition, the county superintendent shall determine whether the dissolution and annexation or reorganization proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a reorganization has approved the reorganization proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the district whose territory is not annexed or reorganized on dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction.

History: En. Sec. 1, Ch. 285, L. 1995; amd. Sec. 2, Ch. 95, L. 1997; amd. Sec. 10, Ch. 510, L. 2005; amd. Sec. 5, Ch. 60, L. 2009; amd. Sec. 13, Ch. 466, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 466, L. 2025. Amendment effective July 1, 2025.

20-6-705 through 20-6-710 reserved.

20-6-711. Tenure protected — hiring preference for noncertified employees. (1) Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of 20-6-701, a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district must be given preference in hiring for any position with the K-12 district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 12, Ch. 555, L. 1991.

20-6-712. Repealed. Sec. 2, Ch. 194, L. 1993.

History: En. Sec. 5, Ch. 555, L. 1991.

Part 8
Public Charter Schools

20-6-801. Short title. This part may be cited as the "Public Charter Schools Act".

History: En. Sec. 1, Ch. 510, L. 2023.

20-6-802. Public charter schools — legislative findings and intent. (1) The legislature finds that:

(a) parents desire education options for their children;

(b) expanding educational opportunities for K-12 education within the state is a necessary and valid public purpose; and

(c) creating options that assist parents and encourage students to develop their full educational potential is vital to the economic competitiveness of the state.

(2) It is the legislature's intent to establish public charter schools that are under the supervision and control of trustees who are elected by qualified electors pursuant to Article IV, section 2, and Article X, section 8, of the Montana constitution for the purposes of:

(a) enhancing Montana's system of education to develop the full educational potential of each person;

(b) enabling parents to make decisions on how best to educate their children;

(c) providing other public educational opportunities for all students, especially those at risk of academic failure;

(d) encouraging and inspiring the use of different models of teaching, governing, scheduling, and providing instruction in both public charter schools and noncharter public schools to meet a variety of student needs;

(e) advancing Montana's commitment to the preservation of American Indian cultural identity, pursuant to Article X, section 1(2), of the Montana constitution, and to the elimination of the American Indian achievement gap by encouraging students, parents, and community members in Indian country to pursue alternative educational opportunities through public charter schools; and

(f) ensuring accountability to the qualified electors and taxpayers in the community in which the charter school is located.

(3) It is the legislature's intent to create innovative and high-performing public charter schools under the general supervision of the board of public education and under the supervision and control of trustees of the governing board who are elected by qualified electors in the community where the charter school is located.

History: En. Sec. 2, Ch. 510, L. 2023.

20-6-803. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means a group of residents of the located school district or county of the located school district or the local school board of the located school district that submits a proposal for a public charter school to the board of public education.

(2) "Board of public education" means the board created by Article X, section 9(3), of the Montana constitution and 2-15-1507. For the purposes of public charter schools established under this part, the board of public education is the sole entity authorized to enter into charter contracts with a governing board.

(3) "Charter contract" means a fixed-term, renewable contract between a governing board of a public charter school and the board of public education that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(4) "Governing board" means the elected board of trustees of a public charter school district exercising supervision and control over a charter school or the local school board that is a party to the charter contract with the board of public education and that exercises supervision and control over a charter school pursuant to the charter contract.

(5) "Local school board" means a preexisting board of trustees exercising supervision and control of the schools and programs of a local school district pursuant to Article X, section 8, of the Montana constitution and the laws of the state of Montana.

(6) "Located school district" means the school district in which a proposed, preoperational, or operational public charter school is located and from which the separate boundaries of the

charter school district are proposed to be formed. When a charter school district is formed, the boundaries of the charter school district are removed from the territory of the located school district.

(7) "Noncharter public school" means a public school that is under the supervision and control of a local school board or the state and is not operating under a charter contract pursuant to 20-6-806.

(8) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(9) "Public charter school" means a public school that:

(a) has autonomy over decisions including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction as defined in a charter contract;

(b) is governed by a local school board or, in the case of a governing board other than a local school board, by the governing board of the public charter school district of which the charter school is a part;

(c) is established and operated under the terms of a charter contract;

(d) allows parents choose to enroll their children;

(e) admits students on the basis of a lottery if more students apply for admission than can be accommodated;

(f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;

(g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(h) operates under the general supervision of the board of public education in accordance with its charter contract; and

(i) if the school is a high school, establishes graduation requirements and has authority to award degrees and issue diplomas.

(10) "Public charter school district" means a school district created pursuant to this part by the board of public education that is governed by a governing board that is not a local school board. A public charter school district:

(a) is a district for governing purposes only;

(b) is not a taxing jurisdiction;

(c) receives state funding as described in 20-6-812;

(d) is subject to Title 20, except as described in this part; and

(e) is not subject to the laws for district boundary changes or school opening under this chapter.

(11) "Resident school district" means the public school district in which a student resides.

(12) "Student" means a child who is eligible for attendance in a public school in the state.

History: En. Sec. 3, Ch. 510, L. 2023; amd. Sec. 1, Ch. 243, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 243, L. 2025. Amendment effective July 1, 2025.

20-6-804. Board of public education responsibilities. (1) In accordance with this part, the board of public education is responsible for executing the following essential powers and duties:

(a) soliciting and evaluating charter proposals;

(b) approving charter proposals that meet identified educational needs and promote a diversity of educational choices, including but not limited to:

(i) increasing standards for student achievement;

(ii) closing achievement gaps between high-performing and low-performing groups of public school students;

(iii) increasing educational opportunities within the public education system;

(iv) providing alternative learning environments for students who are not thriving in traditional school settings;

(v) lowering the dropout rate;

(vi) creating new professional opportunities for teachers and other school personnel;

(vii) encouraging the use of different models of teaching and learning; and

(viii) providing students, parents, community members, and local entities with expanded opportunities for involvement in the public education system;

(c) denying approval of charter proposals that fail to provide clear and convincing proof of their likelihood of success;

(d) negotiating and executing sound charter contracts with each approved public charter school;

(e) monitoring approved public charter schools' performance and legal compliance with charter contract terms;

(f) determining whether each charter contract merits renewal, nonrenewal, or revocation; and

(g) informing the office of public instruction and the relevant county superintendent of schools regarding the status of public charter schools in a timely manner.

(2) On or before December 1 of each year, beginning in the first year that a public charter school has been in operation for a full school year, the board of public education shall publish to the board's website and submit to the legislature in accordance with 5-11-210 an annual report on the state's public charter schools for the school year ending in the preceding calendar year. The annual report must include:

(a) a comparison of the performance of public charter school students with the performance of academically, ethnically, and economically comparable groups of students in noncharter public schools; and

(b) the board's assessment of the successes, challenges, and areas for improvement in meeting the purposes of this part, including the board's assessment of the sufficiency of funding for public charter schools and any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

History: **En. Sec. 4, Ch. 510, L. 2023; amd. Sec. 1, Ch. 97, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 97, L. 2025. Amendment effective April 7, 2025.

Retroactive Applicability: Section 7, Ch. 97, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to public charter schools approved by the board of public education to commence operations for the first time in school years beginning on or after July 1, 2025."

20-6-805. Public charter school proposal process. (1) To solicit, encourage, and guide the development of public charter schools, the board of public education shall issue and broadly publicize a request for proposal by June 1 annually. The content and dissemination of the request for proposal must be consistent with the purposes and requirements of this part.

(2) The request for proposal must include:

(a) the criteria that will guide the board's decision to approve or deny a charter proposal;

(b) clear and detailed questions designed to gauge an applicant's capacity to establish and operate a successful public charter school, as well as guidelines concerning the format and content of an applicant's response to the request for proposal.

(3) A request for proposal must require applicants to describe thoroughly the following essential elements of their public charter school proposal:

(a) an executive summary;

(b) the mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school proposes to serve;

(c) the school district in which the public charter school is proposed to be located and operate;

(d) the grades to be served each year for the full term of the charter contract;

(e) the minimum, planned, and maximum enrollment per year for the term of the charter contract;

(f) specific evidence:

(i) of significant community support for the proposed public charter school; and

(ii) for an applicant that is not a local school board:

(A) that the applicant has sought from the local school board the creation of a school or program of the located school district serving the mission and vision of the proposed public charter school;

(B) the local school board declined to create the school or program or submit to the board of public education a proposal for the creation of a public charter school consistent with the mission and vision of the proposed public charter school; and

(C) a legal description of the property of the existing school district from which the boundaries of the charter school district are proposed to be formed;

(g) for an applicant that is not a local school board, background information on the initial governing board members and, if identified, the proposed school leadership and management team;

(h) the proposed public charter school's proposed calendar and sample daily schedule;

(i) a description of the academic program, including:

(i) plans to formally assess student achievement on an annual basis; and

(ii) variances to existing standards that the proposed public charter school requires;

(j) a description of the proposed public charter school's instructional design, including the type of learning environment, class size and structure, curriculum overview, and teaching methods;

(k) the proposed public charter school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically challenged, and gifted students, including but not limited to compliance with applicable laws and regulations;

(l) a description of cocurricular or extracurricular programs, if any, and how the programs will be funded and delivered;

(m) plans and timelines for student recruitment and enrollment, including lottery procedures;

(n) the proposed public charter school's student discipline policies, including those for special education students;

(o) an organizational chart that clearly presents the proposed public charter school's organizational structure, including lines of authority and reporting between the governing board, staff, related bodies such as advisory bodies or parent and teacher councils, and external organizations that will play a role in managing the school;

(p) a clear description of the roles and responsibilities for the governing board, the proposed public charter school's leadership and management team, and other entities shown in the organizational chart;

(q) a staffing chart for the proposed public charter school's first year and a staffing plan for the term of the charter;

(r) plans for recruiting and developing school leadership and staff;

(s) the proposed public charter school's leadership and teacher employment policies, including performance evaluation plans;

(t) proposed governing bylaws;

(u) explanations of any partnerships or contractual relationships central to the proposed public charter school's operations or mission;

(v) the proposed public charter school's plans for providing transportation, food service, and all other significant operational or ancillary services, if any;

(w) opportunities and expectations for parent involvement;

(x) a detailed school startup plan, identifying tasks, timelines, and responsible individuals;

(y) a description of the proposed public charter school's financial plan and policies, including financial controls and audit requirements;

(z) a description of the insurance coverage the proposed public charter school will obtain;

(aa) startup and 5-year budgets with clearly stated assumptions;

(bb) startup and first-year cash flow projections with clearly stated assumptions;

(cc) evidence of anticipated fundraising contributions, if claimed in the proposal; and

(dd) a sound facilities plan, including backup or contingency plans, if appropriate.

(4) If a public charter school proposal does not contain the elements required in subsection (3), the board shall consider the proposal incomplete and return the proposal to the applicant without taking further action.

(5) (a) In reviewing and evaluating charter proposals, the board shall employ procedures, practices, and criteria consistent with nationally recognized best practices, principles, and

standards for the authorization of public charter schools. The proposal review process must include thorough evaluation of each written charter proposal, an in-person interview with the applicant, and an opportunity in a public forum for local residents to learn about and provide input on each proposal.

(b) Prior to the board's review, the office of public instruction shall provide the board with:

(i) an estimate of the additional state and local costs attributable to the basic entitlement portion of the budget of each charter school proposal based on the planned enrollment in the third year of operations as stated in the proposal pursuant to subsection (3); and

(ii) the additional state and local costs attributable to the basic entitlement portion of the budget of existing public charter schools in the current year.

(6) In deciding whether to approve charter proposals, the board shall:

(a) grant charters only to applicants that have demonstrated competence in each element of the board's published approval criteria and are likely to open and operate a successful public charter school;

(b) base decisions on documented evidence collected through the proposal review process;

(c) for an applicant that is not a local school board, request input from the qualified electors of the located school district regarding concerns about the applicant's proposal being approved;

(d) follow charter-granting policies and practices that are transparent and are based on merit and avoid conflicts of interest or any appearance of conflict;

(e) weigh heavily the evidence of community support, the projected student enrollment, and the input received under subsection (6)(c) and only approve charters whose promise of improved educational outcomes outweighs potential increased costs to state and local taxpayers;

(f) based on the information provided by the office of public instruction in subsection (5)(b), limit the estimated total additional state cost attributable to the basic entitlement in the third year of operations for public charter schools newly approved by the board to the amount specified by the legislature in the appropriations act for the purposes of this program; and

(g) prioritize those proposals that demonstrate a commitment to and robust understanding of personalized and proficiency-based learning as described and defined in 20-7-1601.

(7) (a) The board shall approve or deny a charter proposal within 90 business days after the filing of the charter proposal. When approval is granted to a governing board other than a local school board, the approval constitutes corresponding approval of the creation of a separate charter school district, the boundaries for which consist of the legal description of the campus of the charter school. These boundaries must be removed from the boundaries of the located school district for the purpose of establishing a distinct boundary for the charter school district that is subject to exclusive supervision and control by the governing board of the charter school district.

(b) The board shall adopt by resolution all charter approval or denial decisions in an open meeting.

(c) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed pursuant to 20-6-806.

(d) For any charter denial, the board shall clearly state for the public record the reasons for denial.

History: En. Sec. 5, Ch. 510, L. 2023; amd. Sec. 2, Ch. 97, L. 2025; amd. Sec. 2, Ch. 243, L. 2025; amd. sec. 10, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 2, Ch. 97, L. 2025. Amendment effective April 7, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 243, L. 2025. Amendment effective July 1, 2025.

The amendment to subsection (6)(f) made by sec. 2, Ch. 243, L. 2025, was replaced by sec. 10, Ch. 739, L. 2025, a coordination section. Amendment effective July 1, 2025.

Retroactive Applicability: Section 7, Ch. 97, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to public charter schools approved by the board of public education to commence operations for the first time in school years beginning on or after July 1, 2025."

20-6-806. Charter contract — terms. (1) An initial charter must be granted for a term of 5 operating years, commencing on July 1 of the first school year the public charter school will operate. An approved public charter school may delay its opening for 1 school year to plan and prepare for the school's opening. If the school requires an opening delay of more than 1 school year, the school shall request an extension from the board of public education. The board of public education may grant or deny the extension depending on the school's circumstances.

(2) Within 45 business days of approval of a charter proposal, the board of public education and the governing board of the approved public charter school district shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged.

(3) The performance provisions of the charter contract may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(4) The charter contract must be signed by the presiding officers of the board of public education and the public charter school's governing board.

(5) A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the board of public education.

(6) The board of public education may establish reasonable preopening requirements or conditions to monitor the startup progress of a newly approved public charter school to ensure that the school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening. Public charter schools approved by the board of public education are exempt from the requirements for school opening under Title 20, chapter 6, part 5.

History: En. Sec. 6, Ch. 510, L. 2023; amd. Sec. 3, Ch. 97, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 97, L. 2025. Amendment effective April 7, 2025.

Retroactive Applicability: Section 7, Ch. 97, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to public charter schools approved by the board of public education to commence operations for the first time in school years beginning on or after July 1, 2025."

20-6-807. Governing board — initial board — elections — terms. (1) Subsections (2) through (5) apply to a public charter school not governed by the local school board.

(2) The governing board of a public charter school district must be composed of 7 members. The boundaries of the charter school district consist of the legal description of the campus of the charter school. A majority of the governing board members must be qualified electors of the county in which the public charter school is located. Members must:

(a) be qualified electors in the county in which the public charter school is located or a contiguous county but need not be qualified electors of the located school district; and

(b) possess documented knowledge or experience in the mission or focus of the public charter school.

(3) An applicant for a proposed public charter school shall identify the members of the initial governing board of the charter school district of which the charter school is a part in the proposal submitted to the board of public education. The initial governing board is responsible for preoperation of and initial operation of the public charter school.

(4) At the regular school election in the first year of operation of a public charter school, members must be elected by the qualified electors of the located school district in the same manner as local school boards, except as provided in subsections (2) and (5), in an election conducted by the local school board in the school district in which the public charter school is located. Any elector qualified to vote in the located school district under the provisions of 20-20-301 may vote.

(5) Members of governing boards serve for terms of 5 years, and the terms of members must be staggered to ensure continuity on the governing board.

(6) If the governing board of a public charter school is the local school board, the governing board shall establish and appoint members of an advisory board to provide recommendations and insight regarding the public charter school's operations. Members of the advisory board must include members with knowledge or experience in the mission or focus of the public charter school.

History: En. Sec. 7, Ch. 510, L. 2023.

20-6-808. Enrollment. (1) (a) A public charter school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a public charter school.

(c) A public charter school may limit admission to students within a given age group or grade level.

(d) A public charter school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A public charter school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.

(2) (a) A public charter school shall give enrollment preference to students who are residents of the located school district.

(b) A public charter school may give enrollment preference to:

(i) students who were enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering a lottery.

(ii) children of members of a public charter school's governing board and full-time employees, limited to no more than 10% of the school's total student population.

(3) This section does not preclude the formation of a public charter school for the purpose of serving students with disabilities, students of the same gender, students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend such a school, the public charter school shall select students through a lottery.

(4) If a student who was previously enrolled in a public charter school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the public charter school.

(5) A school district shall provide or publicize to parents and the general public information about public charter schools as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about noncharter public schools in the district.

(6) The board of public education may not restrict the number of students a public charter school may enroll. The capacity of the public charter school must be determined annually by the governing board in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

History: **En. Sec. 8, Ch. 510, L. 2023.**

20-6-809. Charter school performance and renewal. (1) The performance provisions within the charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the board of public education's evaluations of each public charter school. The performance framework must include indicators, measures, and metrics for, at a minimum:

(a) student academic proficiency;

(b) student academic growth;

(c) achievement gaps in both proficiency and growth between major student subgroups;

(d) attendance;

(e) recurrent enrollment from year to year;

(f) postsecondary readiness;

(g) financial performance and sustainability; and

(h) governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(2) Each public charter school shall set annual performance targets designed to help each school meet applicable federal, state, and board of public education expectations.

(3) (a) The contract performance framework must allow the inclusion, with the board of public education's approval, of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance that are consistent with the purposes of this part.

(b) The board of public education shall collect and analyze data from each public charter school it oversees in accordance with the performance framework.

(c) Multiple schools operating under a single charter contract or overseen by a single governing board of a charter school district shall report their performance as separate, individual schools. Each school must be held independently accountable for its performance.

(4) (a) The board of public education shall monitor the performance and legal compliance of each public charter school district and each public charter school, including collecting and analyzing data to support ongoing evaluation according to the charter contract. The board of public education has the authority to conduct or require oversight activities that do not unduly inhibit the autonomy granted to public charter schools and the supervision and control of a public charter school's governing board but that enable the board to fulfill its responsibilities under this part, including conducting appropriate inquiries and investigations consistent with the intent of this part, and to adhere to the terms of the charter contract.

(b) The board of public education shall annually publish a performance report for each public charter school within the performance framework set forth in the charter contract and 20-6-810. The board may require each public charter school it oversees to submit an annual report to assist the board in gathering complete information about each school, consistent with the performance framework.

(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the board of public education shall promptly notify the governing board of the perceived problem and provide a reasonable opportunity for the school to remedy the problem.

(d) The board of public education may take appropriate corrective action or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. The action or sanctions may include, if warranted, requiring a governing board to develop and execute a corrective action plan within a specified timeframe.

(5) (a) A charter may be renewed for successive 5-year terms, although the board of public education may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. The board may grant renewal with specific conditions for necessary improvement to a public charter school.

(b) No later than June 30 of each year, the board of public education shall issue a public charter school performance report and charter renewal application guide to the governing board of any public charter school whose charter will expire the following year. The performance report must summarize the public charter school's performance record to date, based on the data required by this part and the charter contract, and must provide notice of any weaknesses or concerns perceived by the board concerning the public charter school that may jeopardize renewal if not promptly rectified. The public charter school shall respond to the performance report and submit any corrections or clarifications within 90 business days.

(6) The renewal application guide must, at a minimum, provide an opportunity for the governing board of the public charter school to:

(a) present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(b) describe improvements undertaken or planned for the public charter school; and

(c) detail the public charter school's plans for the next charter term.

(7) The renewal application guide must include or refer explicitly to the criteria that will guide the board's renewal decisions, based on the performance framework set forth in the charter contract and consistent with this part.

(8) (a) No later than February 1, the governing board of a public charter school seeking renewal shall submit a renewal application to the board of public education pursuant to the renewal application guide. The board of public education shall rule by resolution on the renewal application no later than 30 business days after the filing of the renewal application.

(b) When considering charter renewal, the board of public education shall:

(i) base its decision on evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(ii) ensure that the data used in making renewal decisions is available to the school and the public; and

(iii) provide a public report summarizing the basis for each decision.

History: En. Sec. 9, Ch. 510, L. 2023; amd. Sec. 4, Ch. 97, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 97, L. 2025. Amendment effective April 7, 2025.

Retroactive Applicability: Section 7, Ch. 97, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to public charter schools approved by the board of public education to commence operations for the first time in school years beginning on or after July 1, 2025."

20-6-810. Charter contract revocation and school closure or charter contract nonrenewal. (1) A charter contract may be subject to nonrenewal or revocation if the board of public education determines that the public charter school:

(a) committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this part or the charter contract and from which the public charter school was not exempted;

(b) failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) failed to meet public safety standards; or

(d) failed to meet generally accepted standards of fiscal management.

(2) The board of public education shall develop revocation and nonrenewal processes that:

(a) provide the governing board with timely notification of the prospect of revocation or nonrenewal and of the reasons for the possible closure;

(b) allow the governing board a reasonable amount of time in which to prepare a response;

(c) provide the governing board an opportunity to submit documents and testimony at a hearing to challenge the rationale for the closure recommendation and in support of the continuation of the school;

(d) allow the governing board to be represented by counsel and call witnesses on their behalf;

(e) permit the recording of the proceedings; and

(f) provide for a final determination conveyed in writing to the governing board.

(3) If the board of public education revokes or denies renewal of a charter, the board shall clearly state, by resolution, the reasons for the revocation or nonrenewal.

(4) Within 10 days of taking action to renew, not renew, or revoke a charter, the board of public education shall provide a copy of the resolution setting forth the action taken and reasons for the decision.

(5) (a) Prior to a public charter school closure, the board of public education shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this part. The protocol must specify responsible parties, transition and closure timelines, and a delineation of the respective duties of the governing board of the public charter school and the board of public education.

(b) The board of public education shall oversee the closure and work with the governing board of the public charter school to ensure a smooth and orderly closure and transition for students and parents.

(c) In the event of a public charter school closure for any reason, the nonrestricted distributable assets of the public charter school must be distributed first to satisfy outstanding payroll obligations for employees of the public charter school, then to creditors of the public charter school, then to public school districts to which students previously attending the closed charter school are returning on a prorated per-pupil basis, and then to the state general fund. If the assets of the public charter school are insufficient to pay all obligations, the prioritization of the distribution of assets may be determined by a court of law.

History: En. Sec. 10, Ch. 510, L. 2023.

20-6-811. Public charter school operation and autonomy. (1) (a) A public charter school must be a public education organization.

(b) A public charter school is subject to all federal laws and authorities as provided in this part or arranged by charter contract with the board of public education consistent with applicable laws, rules, and regulations.

(c) Except as provided in this part, a public charter school is subject to the provisions of Title 20 and any state or local rule, regulation, policy, or procedure relating to noncharter public schools within the located school district.

(d) A single governing board may hold one or more charter contracts. A charter contract may consist of one or more schools, to the extent approved by the board of public education and consistent with applicable law. Each public charter school that is part of a charter school district must be under the supervision and control of the governing board of the charter school district.

(2) A public charter school district or public charter school may not be created within the geographical boundaries of a third-class elementary district, as defined in 20-6-201, or a third-class high school district, as defined in 20-6-301, unless the applicant is the local school board.

(3) The governing board of a public charter school shall function as a local educational agency. A public charter school is responsible for meeting the requirements of a local educational agency under applicable federal, state, and local laws, including those relating to special education.

(4) The governing board of a public charter school is responsible for special education at the school, including identification and service provisions, and is responsible for meeting the needs of enrolled students with disabilities.

(5) The governing board of a public charter school district has all the powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) to receive and disburse funds for school purposes;

(b) to secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;

(c) to incur debt in reasonable anticipation of the receipt of public or private funds;

(d) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(e) to solicit and accept gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

(f) to acquire real property, for use as its facility or facilities, from public or private sources; and

(g) to sue and be sued in its own name.

(6) (a) A public charter school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.

(b) The powers, obligations, and responsibilities set forth in the charter contract may not be delegated or assigned by either party except as otherwise specifically provided in this part.

(7) (a) A public charter school is subject to the same civil rights, health, and safety requirements applicable to other public schools in the state except as otherwise specifically provided in this part.

(b) The governing board shall establish graduation requirements and may award degrees and issue diplomas.

(c) A governing board is subject to and shall comply with state open meeting and public records laws pursuant to Title 2, chapters 3 and 6.

(d) A public charter school shall establish purchasing procedures that include a competitive bidding process for purchases or contracts exceeding $80,000.

(8) (a) Employees in public charter schools have the same rights and privileges as other public school employees except as otherwise provided in this part.

(b) Teachers and other school personnel, as well as governing board members, are subject to criminal history record checks and fingerprinting requirements.

(c) Public charter school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees. However, a public charter school may not interfere with laws and other applicable rules protecting the rights of employees to organize and to be free from discrimination.

History: En. Sec. 11, Ch. 510, L. 2023; amd. Sec. 3, Ch. 243, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 243, L. 2025. Amendment effective July 1, 2025.

20-6-812. Funding for public charter schools. (1) It is the intent of the legislature that a public charter school receive operational funding on a per-pupil basis that is equitable with the per-pupil funding of the located school district.

(2) (a) This subsection (2) applies to the budgeting and funding of a public charter school operated by a local school board.

(b) A public charter school must be considered a separate budget unit of the located school district and must have its ANB calculated separately from other budget units of the district. Except as provided in subsection (2)(c), a public charter school must receive a basic entitlement calculated separately from other budget units of the district when its ANB is greater than:

(i) 70 for an elementary school or program;

(ii) 20 for a middle school or program; or

(iii) 40 for a high school or program.

(c) For the first operating year of a public charter school:

(i) the public charter school is not eligible for the per-ANB entitlement, and the public charter school's eligibility for a separate basic entitlement under subsection (2)(a) must be based on the planned enrollment provided in the public charter school's application as required in 20-6-805(3) and converted to ANB; and

(ii) if, after the October enrollment count, the public charter school's actual enrollment converted to ANB does not meet the eligibility requirements for a separate basic entitlement under subsection (2)(b), the basic entitlement of the public charter school is subject to the return of overpayment provisions under 20-9-344.

(d) For the second and third operating years of a public charter school, a public charter school's 3-year-average ANB is equal to its current year ANB.

(3) (a) This subsection (3) applies to the budgeting and funding of a public charter school district.

(b) The funding of the public charter school district must be distributed as BASE aid, except as provided in this subsection (3)(b), at 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator and qualified staff payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment. The total amount of funding received by a public charter school district under this subsection (3)(b) is both the minimum amount and the maximum amount of state funding for the public charter school district unless otherwise appropriated by the legislature.

(c) Except as provided in subsection (3)(d), a public charter school district is not eligible for a basic entitlement unless its ANB is greater than:

(i) 70 for an elementary school or program;

(ii) 20 for a middle school or program; or

(iii) 40 for a high school or program.

(d) For the first operating year of a public charter school district:

(i) the public charter school district's per-ANB entitlement, Indian education for all payment, data-for-achievement payment, special education allowable cost payment, and eligibility for a basic entitlement must be based on the planned enrollment provided in the public charter school district's application as required in 20-6-805(3) and converted to ANB; and

(ii) if, after the October enrollment count, the public charter school district's actual enrollment converted to ANB is less than its planned enrollment converted to ANB or does not meet the eligibility requirements for a basic entitlement pursuant to subsection (3)(c), the public charter school district is subject to the return of overpayment provisions under 20-9-344.

(4) Students attending a public charter school governed by a local school board who are not residents of the located school district generate funding in the same manner as other nonresident students attending a school of the located district under an out-of-district attendance agreement pursuant to Title 20, chapter 5, part 3.

(5) (a) Except as provided in subsection (5)(b), a public charter school district is prohibited from charging tuition and fees, and the provisions for out-of-district attendance under Title 20, chapter 5, part 3, do not apply to a public charter school district.

(b) The provisions for out-of-district attendance for a child with a disability under Title 20, chapter 5, part 3, apply to a public charter school district, including the resident school district's obligation to support a portion of the costs of the child's education.

(6) For a public charter school that is not governed by the local school board, the county treasurer of the county in which a public charter school is located shall establish funds for the public charter school separate from the funds of the located school district.

(7) The governing board of a public charter school shall report annually on the financial activities of the public charter school in the manner prescribed in 20-9-213(6).

(8) A public charter school district may obligate the public charter school district to indebtedness and is solely responsible for those debts. A public charter school district is not responsible for any debt service obligations that exist in the located school district.

(9) (a) Nothing in this part may be construed to prohibit any person or organization from providing funding or other assistance for the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts or donations of any kind made to the public charter school and to expend or use the gifts or donations in accordance with the conditions prescribed by the donor. A gift or donation may not be accepted if the gift or donation is subject to a condition that is contrary to any provision of law or term of the charter contract.

(b) A public charter school district may receive donations for innovative educational programs as provided for in 15-30-2334, 15-30-3110, and 15-31-158.

(10) Money received by a public charter school from any source and remaining in the public charter school's accounts at the end of a budget year must remain in the public charter school's accounts for use by the public charter school in subsequent years.

History: En. Sec. 12, Ch. 510, L. 2023; amd. Sec. 5, Ch. 97, L. 2025; amd. Sec. 4, Ch. 243, L. 2025; amd. Sec. 3, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 97, L. 2025. Amendment effective April 7, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 243, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability — Retroactive Applicability: Section 7, Ch. 97, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to public charter schools approved by the board of public education to commence operations for the first time in school years beginning on or after July 1, 2025."

Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-6-813. Public charter school access to district facilities and land. (1) A public charter school district has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or an unused portion of a public school facility or property within the located school district.

(2) A public charter school district may negotiate and contract at or below fair market value with a school district, the governing body of a college or university or community college, or any other public entity or for-profit or nonprofit private entity for the use of a facility for a school building.

(3) All applicable laws governing the sale or disposition of property of a school district under 20-6-604 apply to this section.

History: En. Sec. 13, Ch. 510, L. 2023.

20-6-814. Public charter school account. (1) There is a public charter school account in the state special revenue fund provided for in 17-2-102 and administered by the board of public education. The purpose of the account is for the receipt and expenditure of gifts, grants, legacies, devises, and donations given specifically to support the creation and operation of public charter schools created under this part.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying public charter schools as determined by the board of public education. Money in the account is derived from a private nonstate source and is payable by the board of public education without an appropriation pursuant to 17-8-101.

(3) A gift or donation made directly to a specific public charter school or schools is not prohibited by this section.

History: En. Sec. 14, Ch. 510, L. 2023.

CHAPTER 7
SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

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20-7-1504 and 20-7-1505 reserved.
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20-7-1601. Forms of personalized learning — legislative intent.
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Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.
Tax checkoff for agriculture in Montana schools, 15-30-2388, 15-30-2389.

Part 1
Accreditation and Curriculum

20-7-101. Accreditation standards — process for adoption. (1) (a) Accreditation standards, as defined in 20-1-101, for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). For an accreditation standard that requires implementation by school districts, the recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

(b) For accreditation standards addressing academic requirements, program area standards, or content and performance standards, the economic impact statement under subsection (1)(a) must include an analysis of the ability of school districts to implement the standard within existing resources, including time. The intent of this subsection (1)(b) is to ensure that school districts have the capacity to adhere to required accreditation standards within a basic system of free quality public elementary and secondary schools.

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

(a) school district trustees;
(b) school administrators;
(c) teachers;
(d) school business officials;
(e) parents;
(f) taxpayers; and
(g) for content and performance standard revisions, representatives of Montana Indian tribes, as required under 20-1-503.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to:

(a) during a regular legislative session, the joint appropriations subcommittee on education; or

(b) during the legislative interim, the education interim budget committee established in 5-12-501, for review at least 1 month in advance of a scheduled committee meeting.

(4) Unless the expenditures by school districts required under the proposal are determined by the appropriate committee under subsection (3) to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following:

(a) under subsection (3)(a), the current legislative session; or

(b) under subsection (3)(b), the next regular legislative session and shall request the superintendent of public instruction include a request in the superintendent's budget that the same legislature fund implementation of the proposed standard.

(5) The provisions of this section may not be construed to reduce or limit the authority of the education interim committee to review administrative rules, including accreditation standards, within its jurisdiction pursuant to 5-5-215.

(6) Standards for the retention of school records must be as provided in 20-1-212.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501; amd. Sec. 2, Ch. 543, L. 1983; amd. Sec. 4, Ch. 208, L. 2005; amd. Sec. 2, Ch. 379, L. 2015; amd. Sec. 48, Ch. 261, L. 2021; amd. Sec. 1, Ch. 81, L. 2023; amd. Sec. 4, Ch. 557, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 557, L. 2025. Amendment effective July 1, 2025.

20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306.

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979; amd. Sec. 1, Ch. 150, L. 1983; amd. Sec. 1, Ch. 73, L. 2001; amd. Secs. 3, 4, Ch. 462, L. 2005; amd. Sec. 6, Ch. 4, Sp. L. December 2005; amd. Sec. 5, Ch. 418, L. 2011; amd. Sec. 3, Ch. 400, L. 2013; amd. Sec. 10, Ch. 275, L. 2017; amd. Sec. 2, Ch. 336, L. 2017; amd. Sec. 4, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Cross-References

School district assessment for placement of child who enrolls from nonaccredited, nonpublic school, 20-5-110.
Definitions of various schools, 20-6-501.

20-7-103. Montana pathway to excellence program — purpose. (1) Sections 20-7-103 and 20-7-104 may be known as the pathway to excellence program.

(2) The purpose of the pathway to excellence program is to promote educational excellence in Montana's public schools through data-driven decisionmaking.

(3) It is the intent of the program that Montana K-12 public education remain focused on continuous improvement and increased academic achievement for students in public schools.

History: En. Sec. 3, Ch. 418, L. 2011.

20-7-104. Transparency and public availability of public school performance data — reporting — availability for timely use to improve instruction. (1) The office of public instruction shall establish, maintain, and continually improve a statewide K-12 data system that, at a minimum:

(a) includes data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.

(b) eliminates redundant data collections and siloed data systems and facilitates data sharing among the various divisions within the office of public instruction;

(c) facilitates matching of student-level K-12 data with higher education and workforce data; and

(d) protects each student's education records in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99 and any applicable state laws exceeding those requirements.

(2) The superintendent of public instruction shall make available on the office of public instruction's website an educational profile for each school district. A school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) testing results from statewide assessments required by the board of public education;

(c) accountability metrics required by federal law, including, if applicable, district and school-level report cards;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction in a manner prescribed by the superintendent of public instruction the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities.

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) (a) Each school district shall post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(b) If a school district does not have an internet website, the school district shall publish the information required under subsection (4)(a) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(5) The superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in 20-7-105 to analyze the best options for a statewide K-12 data system meeting the requirements of subsection (1). Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states.

(6) In addition to the school district profiles under subsection (2), the superintendent of public instruction shall gather and make available on the office of public instruction's website longitudinal, actionable data in at least the following areas:

(a) demographic information;

(b) enrollment data, including average daily attendance;

(c) statewide assessment data;

(d) untested students;

(e) graduation and dropout data; and

(f) school finance data.

(7) In accordance with 20-7-136 through 20-7-138 and except as otherwise provided and explicitly directed in state law, the superintendent of public instruction may not share or restrict the sharing of student educational records beyond what is allowed or restricted under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99.

History: En. Sec. 4, Ch. 418, L. 2011; amd. Sec. 4, Ch. 400, L. 2013; amd. Sec. 1, Ch. 12, L. 2019; amd. Sec. 1, Ch. 196, L. 2019; amd. Sec. 4, Ch. 747, L. 2023.

20-7-105. K-12 data task force. (1) There is a K-12 data task force established by the office of public instruction.

(2) The K-12 data task force is composed of:

(a) The presiding officer and vice presiding officer of the senate and house standing committees on education and the presiding officer and vice presiding officer of the joint subcommittee for education that deals with appropriations or their designees;

(b) additional positions appointed by the majority vote of the presiding officers and vice presiding officers referred to in subsection (2)(a), as follows:

(i) three elected school board trustees consisting of one each from a class 1, class 2, and class 3 school district;

(ii) three school administrators consisting of one each employed by a class 1, class 2, and class 3 school district;

(iii) three teachers consisting of one each employed by a class 1, class 2, and class 3 school district;

(iv) three technology staff consisting of one each employed by a class 1, class 2, and class 3 school district;

(v) six parents, consisting of one parent of an elementary pupil currently enrolled in each of a class 1, class 2, and class 3 school district and one parent of a high school pupil currently enrolled in each of a class 1, class 2, and class 3 school district; and

(vi) three school district clerks, as provided in 20-3-325, consisting of one each employed by a class 1, class 2, and class 3 school district.

(3) The K-12 data task force shall serve in an advisory capacity to the office of public instruction. The task force shall review, monitor, and provide input and guidance in enhancing the statewide K-12 data system pursuant to 20-7-104.

(4) Unless otherwise provided by law, each member is entitled to be paid $50 for each day in which the member is engaged in the performance of duties under this section and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of task force duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their task force duties outside their regular working hours or during hours charged against their leave time, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 1, Ch. 400, L. 2013.

20-7-106. Terminated. Sec. 6, Ch. 416, L. 2021.

History: En. Sec. 1, Ch. 416, L. 2021; amd. Sec. 1, Ch. 606, L. 2023.

20-7-107 through 20-7-110 reserved.

20-7-111. Instruction in public schools. (1) Except as provided in subsection (2), the board of public education shall define and specify the basic instructional program for pupils in public schools, and this program must be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

(2) The trustees of a school district shall ensure that all pupils in grades 3 through 12 receive instruction about the United States constitution and the pledge of allegiance.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1; amd. Sec. 1, Ch. 239, L. 2021.

Cross-References

Duty of Superintendent or principal to recommend course of instruction, 20-4-402.

Enrollment in private school providing equivalent instruction as excuse from required enrollment in public schools, 20-5-102.

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

20-7-112. Sectarian publications prohibited — religious materials allowed — prayer permitted. (1) (a) A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines.

(b) This subsection (1) does not prohibit:

(i) a school library from including the Bible or other religious material having cultural, historical, or educational significance;

(ii) a pupil from reading from the Bible or other religious material during free reading time; or

(iii) a student from initiating or participating in a conversation about religion, religious beliefs, or religious practices. with another student or a teacher.

(c) If a school, class, or course has requirements for self-selected reading, a pupil must be allowed to read from the Bible or other religious material to meet those requirements.

(2) Prayer is permitted in a school, on school grounds, and at school-sponsored events, but a person may not be compelled to pray. The school day may begin with a prayer.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521; amd. Sec. 1, Ch. 367, L. 1989; amd. Sec. 1, Ch. 280, L. 2023; amd. Sec. 1, Ch. 281, L. 2023.

Cross-References

Freedom of religion guaranteed, Art. II, sec. 5, Mont. Const.
Teaching of sectarian tenets or requiring attendance at religious service prohibited, Art. X, sec. 7, Mont. Const.
Religious instruction released time program — academic credit, 20-1-308.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. The superintendent may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. The superintendent may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505; amd. Sec. 303, Ch. 56, L. 2009.

20-7-114. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through inservice training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

Cross-References

Pupil-instruction-related day, 20-1-304.

20-7-115. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

20-7-116. Supervised correspondence study. The trustees of a district may provide supervised correspondence study for a pupil when it is impossible for the pupil to attend a school because of the isolation of the pupil's residence or the pupil's mental or physical incapacity. Supervision of the correspondence course must be provided by the district superintendent or the county superintendent if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510; amd. Sec. 304, Ch. 56, L. 2009.

Cross-References

Duty of trustees to provide alternate forms of transportation, 20-10-121.
Reimbursement for supervised home study, 20-10-125, 20-10-142.

20-7-117. Kindergarten and preschool programs. (1) The trustees of an elementary district shall establish or make available a kindergarten program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been admitted through the exceptional circumstances provision under 20-5-101 by the board of trustees. The kindergarten program must:

(a) meet, at a minimum, the half-time aggregate hour requirements under 20-1-301;

(b) be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached 5 years of age on or before September 10 of the school year covered by the calculation or have been admitted to the district's kindergarten program by the board of trustees through the exceptional circumstances provision under 20-5-101; and

(c) if offered full-time, allow a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed

accordingly. Financing of preschool programs may not be supported by money available from state equalization aid.

(3) As used in this title, the following definitions apply:

(a) "Kindergarten program" means a 1-year program immediately preceding a child's entry into 1st grade with curriculum and instruction selected by the board of trustees and aligned to the content standards established by the board of public education.

(b) "Preschool program" means a half-time or full-time program to prepare children for entry into kindergarten and governed by standards adopted by the board of public education.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979; amd. Sec. 68, Ch. 370, L. 1987; amd. Sec. 1, Ch. 399, L. 1991; amd. Sec. 11, Ch. 1, Sp. L. May 2007; amd. Sec. 6, Ch. 608, L. 2023; amd. Sec. 4, Ch. 96, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 96, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

Cross-References

Definition of various schools, 20-6-501.

Circumstances under which regular average number belonging may be increased, 20-9-313.

20-7-118. Remote instruction. (1) A school district may provide remote instruction, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for remote instruction. The provision of remote instruction by a district is limited to pupils:

(a) meeting the residency requirements for that district as provided in 1-1-215;

(b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794;

(c) enrolled in the district and physically attending a school or offsite instructional setting of the district under an attendance agreement pursuant to Title 20, chapter 5, part 3; or

(d) seeking remote instruction in another district when the pupil's district of residence does not provide remote or in-person instruction in an equivalent course. A course is not equivalent if the course does not provide the same level of advantage on successful completion, including but not limited to dual credit, advanced placement, and career certification.

(2) A school of a district providing remote instruction shall provide remote instruction to an out-of-district pupil under subsection (1)(d) unless, because of class size restrictions, the accreditation of the school would be adversely impacted by providing remote instruction to the pupil.

(3) (a) A district providing remote instruction shall include pupils in enrollment counts for ANB calculation purposes as described in 20-9-311.

(b) Except as provided in subsection (1)(c) of this section, the provisions of out-of-district attendance and tuition laws under Title 20, chapter 5, part 3, do not apply to remote instruction.

(4) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section.

History: En. Sec. 1, Ch. 570, L. 2005; amd. Sec. 7, Ch. 247, L. 2021; amd. Sec. 3, Ch. 580, L. 2023; amd. Sec. 5, Ch. 431, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

20-7-119. Administration of United States civics test. (1) Each public high school in the state is encouraged to administer to each student, except as provided in subsection (2), at least once during a student's high school career, a United States civics test administered by the United States citizenship and immigration services to persons seeking to be naturalized citizens.

(2) A public high school may provide each student with the opportunity to take the test as many times as necessary for the student to pass the test. A student who has an individualized education program under which the civics test is determined to be an inappropriate requirement for the student may not be required to take the civics test.

(3) A student passes the civics test if the student correctly answers at least 70% of the questions.

(4) The superintendent of public instruction is encouraged to annually publish a list of high schools in the state whose seniors receiving a regular diploma, except for those exempted from taking the test under subsection (2), all pass the United States civics test under subsection (1) and recognize these schools as United States civics all-star schools for that school year.

History: En. Sec. 1, Ch. 303, L. 2017.

20-7-120. Human sexuality instruction — notice to parents — excused absences — prohibited activities. (1) (a) A parent, guardian, or other person who is responsible for the care of a child may refuse to allow the child to attend or withdraw the child from human sexuality instruction. The withdrawal or refusal to attend is an excused absence pursuant to 20-5-103.

(b) A school may not allow a child to attend identity instruction unless the child's parent or guardian agrees in writing to allow the child to attend. Pursuant to 20-5-103, a child is excused from participating in identity instruction unless the child fails to attend after the parent or guardian has agreed in writing to allow the child's attendance. A school may allow a parent or guardian the opportunity to provide the agreement under this subsection (1)(b) at the beginning of a school year or semester as part of the annual notification under subsection (3) but shall allow a parent or guardian to cancel the agreement by providing written notification to the district superintendent at any time.

(2) Any school that provides human sexuality instruction or identity instruction shall adopt a policy ensuring parental or guardian notification no fewer than 5 school days or more than 14 school days prior to holding an event or assembly or first introducing materials for instructional use. Additional notifications after providing notice under this subsection are not required.

(3) Using contact information most recently provided by the parent or guardian, a school district shall annually notify in advance the parent or guardian of each student scheduled to be enrolled in a course that includes units or lessons on human sexuality instruction or identity instruction in the district or school of:

(a) the basic content of the district's or school's human sexuality instruction or identity instruction intended to be taught to the student and the option to review all curriculum materials related to human sexuality instruction or identity instruction in the course pursuant to subsection (5);

(b) the parent's or guardian's right to withdraw the student from the district's or school's human sexuality instruction; and

(c) the requirement that the parent or guardian provide written permission to allow the child to attend identity instruction.

(4) In addition to the notice required in subsection (3), a school district shall adopt a policy to ensure an annual notice is available, including an electronic link to materials or summaries of materials, consistent with copyright laws, for:

(a) the district's health enhancement curriculum, including lesson plans or other materials used for human sexuality instruction or identity instruction; and

(b) a calendar of events or assemblies at which human sexuality instruction or identity instruction will be provided.

(5) (a) A school district shall make all curriculum materials used in the district's or school's human sexuality instruction and identity instruction available for public inspection prior to the use of the materials in actual instruction.

(b) A school district shall prepare a summary of the district's health enhancement curriculum and shall review and prepare any updates to the summary each year. The summary is public information and is subject to the public's right to access information pursuant to 2-6-1003.

(6) A school district or its personnel or agents may not permit a person, entity, or any affiliate or agent of the person or entity to offer, sponsor, or furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases to its students or personnel if the person, entity, or any affiliate or agent of the person or entity is a provider of abortion services.

(7) If, after investigating a violation under this section, the trustees of a district find that an individual has knowingly or repeatedly violated this section, the trustees shall report the findings to the board of public education pursuant to 20-4-110.

(8) (a) For the purposes of this section, the following terms apply:

(i) "Human sexuality instruction" means instruction that has the goal or purpose of studying, exploring, or informing students about any of the following human sexuality topics: intimate relationships, sexual anatomy, sexual reproduction, sexually transmitted infections, sexual acts, abstinence, contraception, or reproductive rights and responsibilities.

(ii) "Identity instruction" means instruction that has the goal or purpose of studying, exploring, or informing students about gender identity or gender expression, or sexual orientation.

(iii) "Instruction" means the conduct of organized learning activities, including the provision of materials, for students in a public school, whether conducted by a teacher or other school staff or guests invited at the request of the school or district and regardless of the duration, venue, or method of delivery.

(b) Neither "human sexuality instruction" nor "identity instruction" includes or applies to a teacher's response to an unexpected student-initiated inquiry related to the topics under each term to the extent necessary to resolve the inquiry or to maintain civility and decorum in the classroom.

History: En. Sec. 2, Ch. 316, L. 2021; amd. Sec. 1, Ch. 300, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 300, L. 2025. Amendment effective July 1, 2025.

20-7-121 through 20-7-130 reserved.

20-7-131. Equivalency of completion of secondary education. The superintendent of public instruction shall issue, in accordance with the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

History: En. Sec. 2, Ch. 94, L. 1983.

Cross-References

Board of Public Education — rules, 20-2-121.

20-7-132. Firearms safety education. The trustees of a district are encouraged to establish and maintain a firearms safety education course. The trustees may adopt a course of instruction developed by the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association as its firearms safety education course. Instructors from the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association or a person recognized by the trustees as having expertise in firearms safety education may be used to provide the instruction.

History: En. Sec. 1, Ch. 138, L. 1997.

20-7-133. Pledge of allegiance required — exemption for students and teachers. (1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state and may be followed by a moment of silence.

(2) The recitation required in subsection (1) must be conducted at the beginning of the first class of each school day in kindergarten through grade 12.

(3) The recitation must be conducted:

(a) by each individual classroom teacher or the teacher's surrogate; or

(b) over the school intercom system by a faculty member or person designated by the principal.

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

(5) If a student or teacher declines to participate in the recitation of the pledge pursuant to this section, a school district may not for evaluation purposes include any reference to the student's or teacher's not participating.

History: En. Sec. 1, Ch. 320, L. 1997; amd. Sec. 2, Ch. 239, L. 2021.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

20-7-134. Access to public high school campuses — definition. (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, "armed forces" means the United States army, marine corps, navy, air force, space force, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services.

History: En. Sec. 1, Ch. 271, L. 2003; amd. Sec. 3, Ch. 303, L. 2023.

20-7-135. Where sexually oriented performances are prohibited. (1) A library that receives any form of funding from the state may not allow a sexually oriented performance as defined in 45-8-117 on its premises.

(2) A school or library that receives any form of funding from the state may not allow a sexually oriented performance or drag story hour, as defined in 45-8-117, on its premises during regular operating hours or at any school-sanctioned extracurricular activity.

(3) A sexually oriented performance is prohibited:

(a) on public property in any location where the performance is in the presence of an individual under the age of 18; and

(b) in a location owned by an entity that receives any form of funding from the state.

(4) A library, a school, or library or school personnel, a public employee, or an entity described in subsection (3)(b) or an employee of the entity convicted of violating the prohibition under this section shall be fined $5,000 and, if applicable, proceedings must be initiated to suspend the teacher, administrator, or specialist certificate of the offender under 20-4-110 for 1 year. If an offender's certificate has previously been suspended pursuant to this subsection (4), proceedings must be initiated to permanently revoke the teacher, administrator, or specialist certificate of the offender under 20-4-110 on a subsequent violation of this section.

History: En. Sec. 3, Ch. 719, L. 2023.

20-7-136. Legislative findings — purpose. (1) The legislature finds that:

(a) the utilization of education and workforce data holds great promise for developing the full educational potential of Montanans and in maximizing the effectiveness of state investments in education and workforce systems; and

(b) a systems approach with shared governance between relevant agencies is the best way to utilize education and workforce data while ensuring that the data is only used for appropriate purposes and in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and all other relevant federal and state privacy laws, and any other privacy measures required by the education and workforce data governing board.

(2) The purpose of 20-7-136 through 20-7-138 is to create a strong and transparent education and workforce data governing board with authority over the linkage of education and workforce data gathered and maintained by state agencies to ensure that the data is used to benefit the people of the state in a secure manner and only for appropriate purposes.

History: En. Sec. 1, Ch. 747, L. 2023.

20-7-137. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the education and workforce data governing board established in 20-7-138.

(2) "Contributing agencies" means the following state agencies that gather and maintain education and workforce data, serve on the board, and are subject to the policies developed by the board pursuant to 20-7-138:

(a) the office of public instruction;
(b) the office of the commissioner of higher education; and
(c) the department of labor and industry.

(3) "Education data" means data collected or reported at the student level that is included in a student's educational record, including but not limited to:

(a) career and college readiness indicators;
(b) state and national assessment data;
(c) course-taking and completion data in elementary, secondary, and postsecondary education;
(d) elementary, secondary, and postsecondary grade point average data;
(e) 4-year, 5-year, and 6-year high school graduation rate data;
(f) first to second year retainment data;
(g) certificate, diploma, and degree attainment data;
(h) college enrollment course-taking, credit, and contact hour accumulation data;
(i) attendance and transferability data;
(j) special education data;
(k) remediation data; and
(l) demographics data.

(4) "Workforce data" means data related to an individual's workforce outcomes, including but not limited to, an individual's:

(a) labor and workforce training program participation and completion information data;
(b) wage information;
(c) unemployment claim eligibility information;
(d) employer information; and
(e) demographics data.

History: En. Sec. 2, Ch. 747, L. 2023.

20-7-138. Education and workforce data governing board — membership — duties. (1) There is an education and workforce data governing board. The board is administratively attached to the department of administration as provided in 2-15-121.

(2) The board is comprised of five voting members:

(a) the director of the department of administration or the director's designee;
(b) the superintendent of public instruction or the superintendent's designee;
(c) the commissioner of higher education or the commissioner's designee;
(d) the commissioner of labor and industry or the commissioner's designee; and
(e) the presiding officer of the board of public education or the presiding officer's designee.

(3) The nonvoting members of the board are:

(a) the state chief information officer or the officer's designee;
(b) the legislative fiscal analyst or the analyst's designee;
(c) the legislative auditor or the auditor's designee; and
(d) the director of legislative services or the director's designee.

(4) The presiding officer of the board is the director of the department of administration or the director's designee.

(5) The board shall meet at least quarterly. The presiding officer may call special meetings whenever necessary. The presiding officer shall notify each member of the board of any special meeting before the fixed time for the special meeting. A majority of the board may petition the presiding officer to call a special meeting.

(6) Meetings of the board must be open to the public. Archived videos of the board's meetings must be made available to the public through the website.

(7) The board shall:

(a) develop and implement policies and procedures for the linking and sharing of education and workforce data among the contributing agencies to effectuate the purposes of 20-7-136 through 20-7-138, including policies and procedures describing:

(i) the specific types of educational and workforce data that must be shared by the contributing agencies;
(ii) the manner in which personally identifiable information is secured;
(iii) appropriate use; and
(iv) allowable access by contributing agencies and other entities.
(b) develop an education and workforce research agenda and data plan to:
(i) improve alignment across existing programs and systems;
(ii) support student success in K-12 education, higher education, and the workforce;
(iii) increase the efficiency and effectiveness of state education, training, workforce, and financial aid programs; and
(iv) equip local and state policymakers with information about education and workforce development;
(c) work with the contributing agencies to create, publish, and make publicly available a data inventory and dictionary of data elements with definitions to ensure the integrity and quality of the data collected and reported;
(d) facilitate using education and workforce data to inform decisionmaking by state and local governments, educational agencies, institutions of higher education, and other education stakeholders in order to maximize the operational efficiency of the state's education and workforce systems;
(e) provide technical and data analysis support to contributing agencies and other data users;
(f) develop and implement policies and procedures regarding data and research requests;
(g) develop and make available a model data-sharing agreement that allows for reciprocal sharing of information between public schools, public, private, or tribal institutions of higher education, and state and local workforce entities; and
(h) develop and implement policies:
(i) to ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and all other relevant federal and state privacy laws; and
(ii) to provide for additional privacy protections determined to be necessary by the board.
(8) The board may form committees, work groups, or advisory councils to accomplish the board's purposes.
(9) The board shall, in accordance with 5-11-210, report to the education interim committee and the education interim budget committee on the board's work.

History: En. Sec. 3, Ch. 747, L. 2023.

Part 2
Libraries

Part Cross-References

Authority of Superintendent of Public Instruction to employ educational media supervisor, 20-3-104.
Libraries, Title 22, ch. 1.

20-7-201. State visual, aural, and other educational media library. A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in the audiovisual and media library account in the state special revenue fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the audiovisual and media library account, for the operation, maintenance, enlargement, and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 470, L. 1987.

20-7-202. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

History: **En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.**

Cross-References

Contracts with public library board of trustees, 22-1-309.

20-7-203. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

History: **En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.**

20-7-204. School library book selection. School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

History: **En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.**

20-7-205. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

History: **En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.**

Part 3

Vocational and Technical Education

Part Cross-References

Vocational-technical education defined, 20-1-101.

20-7-301. Duties of superintendent of public instruction. The superintendent of public instruction is the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 career and vocational/technical education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for K-12 career and vocational/technical education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 career and vocational/technical education, the policies adopted by the superintendent of public instruction must include:

(1) a state plan for development of the system;

(2) standards for K-12 career and vocational/technical education courses and programs;

(3) a review process for the establishment and deletion of programs;

(4) instructor qualifications for K-12 career and vocational/technical education courses and programs;

(5) criteria for approval of K-12 career and vocational/technical education courses and programs;

(6) a basis for apportionment of all money appropriated by the legislature for K-12 career and vocational/technical education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(7) a basis for apportionment of all money received by the state of Montana for K-12 career and vocational/technical education from the federal government in accordance with the acts of congress;

(8) a system of evaluation of K-12 career and vocational/technical education that allows for consideration of the current and projected workforce needs and job opportunities; and

(9) any other policy that is consistent with public law and that is necessary for the proper operation of a system of K-12 career and vocational/technical education.

History: **En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979; amd. Sec. 11, Ch. 658, L. 1987; amd. Sec. 6, Ch. 133, L. 2001.**

20-7-302. Repealed. Sec. 21, Ch. 598, L. 1979.

History: **En. 75-7703 by Sec. 406, Ch. 5, L. 1971; (amd. Sec. 2, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 2, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7703.**

20-7-302.1. Renumbered 20-7-308. Code Commissioner, 2001.

20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs. The trustees of an elementary or high school district may establish and maintain a K-12 career and vocational/technical education course or program that complies with the K-12 career and vocational/technical education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal funding, it must be approved by the superintendent of public instruction for compliance with K-12 career and vocational/technical education standards.

History: En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979; amd. Sec. 13, Ch. 658, L. 1987; amd. Sec. 8, Ch. 133, L. 2001.

Cross-References

Powers and duties of community college trustees, 20-15-225.

20-7-304. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 7, Ch. 598, L. 1979.

20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules. (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary K-12 career and vocational/technical education. The money must be allocated to high school districts providing approved secondary K-12 career and vocational/technical education programs in accordance with 20-7-306 and this section.

(2) A high school district providing secondary K-12 career and vocational/technical education programs shall apply to the superintendent of public instruction for funds available under 20-7-306 and this section. The superintendent of public instruction shall by rule prescribe the method for distribution, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding consistent with Title 20, chapter 7, part 3.

(3) A secondary K-12 career and vocational/technical education program in a high school district may not be funded until that program has been offered by the school district for 1 school year.

(4) As used in 20-7-306 and this section, the term "school district" means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

History: En. Sec. 1, Ch. 287, L. 1981; amd. Sec. 9, Ch. 133, L. 2001; amd. Sec. 2, Ch. 392, L. 2019; amd. Sec. 1, Ch. 69, L. 2021.

Cross-References

ANB defined, 20-1-101.
Definition of elementary and high school districts, 20-6-101.
Definition of various schools, 20-6-501.
Calculation of average number belonging, 20-9-311.

20-7-306. Distribution of secondary K-12 career and vocational/technical education funds. (1) The superintendent of public instruction shall categorize secondary K-12 career and vocational/technical education programs based on weighted factors, including but not limited to:

(a) K-12 career and vocational/technical education enrollment;

(b) approved career and technical student organizations;

(c) field supervision of students beyond the school year for K-12 career and vocational/technical education;

(d) district expenditures related to the K-12 career and vocational/technical education programs; and

(e) student participation in workforce development activities, including but not limited to:

(i) attainment of industry-recognized professional certifications; and

(ii) work-based learning programs, such as internships and registered apprenticeships.

(2) The superintendent of public instruction shall adjust the weighted factors outlined in subsection (1) as necessary to ensure that the allocations do not exceed the amount appropriated.

(3) Except for other expenditures outlined in subsection (1)(d), funding must be based upon the calculation for secondary K-12 career and vocational/technical education programs of the high school district in the year preceding the year for which funding is requested. Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested. The funding must be computed for each separate secondary K-12 career and vocational/technical education program.

(4) For secondary career and vocational/technical education programs, the total funding must be distributed to eligible programs based on the factors listed in subsection (1).

(5) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary K-12 career and vocational/technical education programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(6) Any increase in the amount distributed to a school district from the biennial state appropriation for secondary K-12 career and vocational/technical education must be used for the expansion and enhancement of career and vocational/technical education programs and may not be used to reduce previous district spending on career and vocational/technical education programs.

History: En. Sec. 2, Ch. 287, L. 1981; amd. Sec. 5, Ch. 337, L. 1989; amd. Sec. 50, Ch. 633, L. 1993; amd. Sec. 10, Ch. 133, L. 2001; amd. Sec. 1, Ch. 350, L. 2015; amd. Sec. 3, Ch. 336, L. 2017; amd. Sec. 17, Ch. 3, L. 2019.

Cross-References

Incentives for creation of advanced opportunity programs, 20-7-1506.

Calculation of average number belonging, 20-9-311.

20-7-307. Work-based learning programs — requirements of agreements. (1) A work-based learning program operated in compliance with 20-7-1510 must include a written agreement executed by the pupil and the pupil's parent or guardian, the school in which the pupil is enrolled, and the work-based learning partner. The agreement must include:

(a) a provision prioritizing accommodation of the pupil's academic commitments by corresponding to the academic calendar and the pupil's course schedule;

(b) a provision for periodic assessment to ensure ongoing beneficial learning and to complete the work-based learning experience when beneficial learning is complete;

(c) a description of how the pupil's classroom activities and on-the-job experiences will be planned and supervised to ensure that both activities are structured as an educational environment; and

(d) a designation of the academic credit that will be awarded to the pupil through the pupil's participation in the work-based learning experience.

(2) To qualify for exclusion under 39-3-406(1)(a), the agreement must contain the following in addition to the requirements in subsection (1) of this section:

(a) a clear statement that there is no expectation of compensation;

(b) a confirmation that the pupil's involvement in the work-based learning experience complements, rather than displaces, the work of paid employees while providing significant educational benefits to the pupil; and

(c) a provision confirming that the work-based learning experience is conducted without entitlement to a paid job at the conclusion of the experience.

History: En. Sec. 1, Ch. 477, L. 2023.

20-7-308. State director of K-12 career and vocational/technical education — duties. There is a state director of K-12 career and vocational/technical education appointed by the superintendent of public instruction. The director shall:

(1) administer the K-12 career and vocational/technical education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for adoption by the superintendent of public instruction;

(3) employ, with the confirmation of the superintendent of public instruction, professional staff consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education;

(4) report the status of K-12 career and vocational/technical education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all K-12 career and vocational/technical education records in the director's office;

(6) provide K-12 career and vocational/technical education supervisory and consultative assistance to districts;

(7) prepare any necessary reports for the superintendent of public instruction or the legislature in accordance with 5-11-210; and

(8) perform any other duty assigned by the superintendent of public instruction.

History: En. Sec. 2, Ch. 598, L. 1979; amd. Sec. 12, Ch. 658, L. 1987; amd. Sec. 7, Ch. 133, L. 2001; Sec. 20-7-302.1, MCA 1999; redes. 20-7-308 by Code Commissioner, 2001; amd. Sec. 49, Ch. 261, L. 2021.

20-7-309. Funding for career and technical education programs in middle grades. (1) The superintendent of public instruction shall annually distribute money from the appropriation for middle grades career and technical education. The money must be allocated to elementary and K-12 school districts with accredited and approved junior high, middle school, or 7th and 8th grade programs.

(2) The superintendent of public instruction shall by rule prescribe the method for distribution, the form of the application, budget procedures, and accounting rules for the funds. The legislature intends that the state money be used to enhance distributions of federal funding under the Carl D. Perkins Career and Technical Education Improvement Act of 2006 to support middle grades career and technical education in line with the plan developed under 20-7-330, except that the state money may not be limited by school size and that the distribution method adopted by the superintendent of public instruction be equitable. The superintendent of public instruction may prescribe other requirements for the receipt of funding consistent with Title 20, chapter 7, part 3.

History: En. Sec. 1, Ch. 122, L. 2025.

Compiler's Comments

Effective Date: This section is effective July 1, 2025.

20-7-310. Credit for employment — congregate-care facilities, child-care facilities, and school-age programs. (1) A student who is 16 years of age or older at a public school or nonpublic school and who is employed on a paid or voluntary basis at a congregate-care facility, child-care facility, or school-age program may earn one unit of credit for graduation for every 8,100 minutes worked at the congregate-care facility, child-care facility, or school-age program.

(2) The public school or nonpublic school shall develop a written application for the student seeking credit under this section. The application form must include the following information:

(a) the student's name;

(b) the name, address, and contact information for the congregate-care facility, child-care facility, or school-age program at which the student is employed;

(c) the name of an individual supervising the student at the congregate-care facility, child-care facility, or school-age program;

(d) a description of the work the student is performing at the congregate-care facility, child-care facility, or school-age program; and

(e) the number of minutes the student is employed at the congregate-care facility, child-care facility, or school-age program.

(3) The public school or nonpublic school shall establish:

(a) deadlines for submission of the application; and

(b) a process for verification of the number of minutes the student works at the congregate-care facility, child-care facility, or school-age program.

(4) The public school or nonpublic school may establish conditions and requirements on the type of work the student is performing that the student shall satisfy to earn credit toward graduation.

(5) The public school or nonpublic school may not award credit to the student unless the school approves the student's application and the student has satisfied all of the requirements under this section.

(6) For the purposes of this section, the following definitions apply:

(a) "Child-care facility" means a day-care center, group day-care home, or family day-care home licensed or registered under the provisions of Title 52, chapter 2, part 7.

(b) "Congregate-care facility" has the same meaning as:
(i) "community residential facility" as defined in 76-2-411;
(ii) "developmental disabilities facility" as defined in 53-20-202;
(iii) "long-term care facility" as defined in 50-5-101; and
(iv) "residential care facility" as defined in 50-5-101.

(c) "School-age program" means a program serving children 5 years of age or older during the school year or summer.

History: En. Sec. 1, Ch. 677, L. 2025.

Compiler's Comments

Effective Date: Section 3, Ch. 677, L. 2025, provided: "[This act] is effective July 1, 2025."

20-7-311. Renumbered 20-16-106. Sec. 33, Ch. 658, L. 1987.

20-7-312. Renumbered 20-16-104. Sec. 33, Ch. 658, L. 1987.

20-7-313. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.

20-7-314. Renumbered 20-16-108. Sec. 33, Ch. 658, L. 1987.

20-7-315 through 20-7-319 reserved.

20-7-320. State-level strengthening career and technical student organizations. (1) There is a state-level strengthening career and technical student organizations program.

(2) The purposes of the program are to:

(a) strengthen Montana's career and technical student organizations by increasing graduation rates, enhancing student leadership opportunities, developing workforce skills, and facilitating transitions to postsecondary education and employment for all participating students;

(b) ensure alignment of activities of local career and technical student organizations with nationally affiliated programs and activities;

(c) provide a base of funding for the statewide coordination of career and technical student organizations; and

(d) distribute performance grants to career and technical student organizations.

(3) To be eligible for funding under this section, each state-approved career and technical student organization must be affiliated with a respective national career and technical student organization and be appropriately incorporated as a Montana nonprofit organization in compliance with state law and regulations regarding operations and financial reporting. The career and technical student organizations eligible for funding under this section are:
(a) Montana HOSA: future health professionals;
(b) Montana BPA (business professionals of America);
(c) Montana DECA (distributive education clubs of America);
(d) Montana FFA (future farmers of America);
(e) Montana TSA (technology student association);
(f) skillsUSA Montana; and
(g) Montana FCCLA (family, career and community leaders of America).

(4) The superintendent of public instruction shall distribute funds appropriated for base funding of career and technical student organizations by September 1 each year. Each organization must receive an equal base amount of funding utilizing the full amount appropriated for base funding to support operations, management, and expenses. If an organization declines this funding for any reason, the remainder must be split equally between remaining career technical student organizations.

(5) (a) The superintendent of public instruction shall distribute performance grants to career and technical student organizations by September 1 each year as described in this subsection (5). To be eligible for a performance grant, an organization must attest to and provide documentation of a minimum of $20,000 in matching funds, which must consist of a minimum of $15,000 in cash donations or other verifiable market value and may include $5,000 in in-kind contributions. An organization may not receive more than 20% of the amount appropriated for performance grants in any fiscal year.

(b) Career and technical student organizations shall submit proposals for performance grants by June 15 each year. The proposals must contain the following:

(i) a written plan detailing goals, objectives, and outcomes that the organization plans to accomplish in the next fiscal year and the performance metrics to be used to evaluate effectiveness. The plan must include goals related to:

(A) student leadership skills;

(B) membership retention and growth;

(C) workforce experience; and

(D) community and business engagement.

(ii) a description of specific efforts the organization will undertake in the next fiscal year to:

(A) increase participation in rural areas, public and nonpublic schools, and home schools;

(B) make online chapters and remote opportunities available;

(C) increase student attainment of workforce certifications, credentials, trainings, dual enrollment credits, internships, preapprenticeships, and career explorations and job shadow experiences; and

(D) collaborate and form partnerships with business and industry;

(iii) a projected budget for the upcoming grant cycle; and

(iv) a performance report for the current fiscal year that includes but is not limited to the following:

(A) an organizational overview, including but not limited to:

(I) the state director;

(II) the state board members;

(III) chapters and locations; and

(IV) membership totals;

(B) accomplishments related to the items set forth in the prior year's proposal, including relevant data;

(C) an accounting of expenditures of grant funds; and

(D) evidence of a minimum of $20,000 in matching funds, which must consist of a minimum of $15,000 in cash donations or other verifiable market value and may include $5,000 in in-kind contributions.

(c) The superintendent of public instruction shall award performance grants based on evaluations of the proposals and shall score proposals using equally weighted metrics in each category in subsections (5)(b)(i) through (5)(b)(iv).

(d) Career and technical student organizations may request assistance from the office of public instruction in formulating proposals for performance grants.

(e) For fiscal year 2024, the money appropriated for performance grants to career and technical student organizations must be distributed equally to the career and technical student organizations.

(6) The superintendent of public instruction shall report, in accordance with 5-11-210, to the education interim committee on the funding distributed under the state-level strengthening career and technical student organizations program established in this section and the outcomes reported by organizations pursuant to subsection (5).

(7) As used in this section, "career and technical student organization" or "organization" means an organization for students enrolled in a state-approved career and technical education program that engages in career and technical education activities as an integral part of the instructional program.

History: En. Sec. 1, Ch. 276, L. 2013; amd. Sec. 1, Ch. 706, L. 2023.

20-7-321. Acceptance of acts of congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the "Vocational Education Act of 1963" and the "Vocational Education Amendments of 1968" and further hereby accepts and assents to the terms and provisions of all acts of the congress amendatory of the "Vocational Education Act of 1963" and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.

History: En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.

20-7-322. Renumbered 20-16-201. Sec. 33, Ch. 658, L. 1987.

20-7-323. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.

20-7-324. Renumbered 20-16-202. Sec. 33, Ch. 658, L. 1987.

20-7-325. Renumbered 20-16-204. Sec. 33, Ch. 658, L. 1987.

20-7-326. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 5, Ch. 598, L. 1979; amd. Sec. 1, Ch. 161, L. 1983.

20-7-327. Renumbered 20-16-203. Sec. 33, Ch. 658, L. 1987.

20-7-328. Legislative intent. (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins Career and Technical Education Improvement Act of 2006 provide a seamless system of services to those people seeking to improve their career and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of career and technical services at both the secondary and postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for career and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities.

History: En. Sec. 1, Ch. 460, L. 1999; amd. Sec. 43, Ch. 2, L. 2009.

20-7-329. Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 career and technical education programs, services, and activities allowed by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, and in concert with the state plan for career and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of technical education programs, services, and activities that receive funding allowed by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended.

History: En. Sec. 2, Ch. 460, L. 1999; amd. Sec. 11, Ch. 133, L. 2001; amd. Sec. 44, Ch. 2, L. 2009.

20-7-330. Creation of state plan committee — meetings — report. (1) (a) The commissioner of higher education and the superintendent of public instruction shall form a state plan committee as necessary to update the state plan for career and technical education as required by 20 U.S.C. 2301.

(b) The commissioner of higher education shall appoint three people to serve on the state plan committee as follows:

(i) two educators; and

(ii) one representative of a business or community interest.

(c) The superintendent of public instruction shall appoint three people to serve on the state plan committee as follows:

(i) two educators; and

(ii) one representative of a business or community interest.

(d) The commissioner of labor and industry shall appoint two people to serve on the state plan committee as follows:

(i) the executive director or the board chair of the Montana state workforce innovation board provided for in 53-2-1203; and

(ii) one representative of the labor community.

(2) (a) At least three times a year, the commissioner of higher education and the superintendent of public instruction shall meet with the commissioner of labor and industry, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education. The meetings must take place during a regular meeting of each of the following entities:

(i) the board of regents;

(ii) the board of public education; and

(iii) the state workforce innovation board.

(b) During the meetings required under subsection (2)(a), the state plan committee shall, at a minimum:

(i) discuss the state plan;

(ii) identify any issues or concerns with the administration in Montana of the Strengthening Career and Technical Education for the 21st Century Act of 2018;

(iii) identify the needs of students, employers, and career programs in Montana and determine the best way to meet those needs; and

(iv) if necessary, make changes in the administration and operation in Montana of the Strengthening Career and Technical Education for the 21st Century Act of 2018.

(3) If the state plan committee submits a new or revised 4-year state plan in accordance with subsection (2)(b)(iv), the plan must be written to coordinate with or to be included in the federal Workforce Innovation and Opportunity Act combined state plan as provided in 53-2-1205.

(4) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210.

History: En. Sec. 3, Ch. 460, L. 1999; amd. Sec. 1, Ch. 130, L. 2001; amd. Sec. 45, Ch. 2, L. 2009; amd. Sec. 1, Ch. 538, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 538, L. 2025. Amendment effective October 1, 2025.

20-7-331. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.

20-7-332. Renumbered 20-16-205. Sec. 33, Ch. 658, L. 1987.

20-7-333. Renumbered 20-16-206. Sec. 33, Ch. 658, L. 1987.

20-7-334. Advancing agricultural education in Montana program account. (1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account and money appropriated by the legislature for the purpose of this section must be used by the office of public instruction for addressing the stability of and making improvements to Montana's agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction's agricultural education specialist may receive a payment of $1,000 prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a payment of up to $1,000 prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a payment of up to $7,500. A school with an existing agricultural education program is eligible for an additional payment of up to $7,500 each time the school expands the program's teaching staff by adding a full-time equivalent teacher endorsed in agricultural education.

(d) Program administrators in Bozeman and Helena must receive a total of $20,000 annually for the costs of providing a minimum of one onsite visit each year to each participating school.

History: En. Sec. 1, Ch. 418, L. 2009; amd. Sec. 1, Ch. 337, L. 2011; amd. Sec. 1, Ch. 245, L. 2015.

Cross-References

Deputy superintendent — staff, 20-3-103.
State director of K-12 career and vocational/technical education — duties, 20-7-308.

20-7-335. Career coaching for career technical education and K-12 career and vocational/technical education — duties. (1) A high school district may utilize a career coach for educational and career counseling opportunities for students.

(2) A career coach may offer opportunities for internships or apprenticeships within a community and assist students with high school course offerings, career options, occupational training, and postsecondary opportunities associated with the student's field of interest within the career technical education and K-12 career and vocational/technical education programs provided for in Title 20, chapter 7, part 3.

(3) To be eligible to be a career coach, a person must have:

(a) a bachelor's degree or a class 4 vocational, recreational, or adult education certificate in accordance with 20-4-106;

(b) an associate degree and have completed a minimum of 5,000 hours of documented, relevant work experience with recognized credentials, which may include apprenticeship training; or

(c) a high school diploma or high school equivalency diploma and have completed a minimum of 10,000 hours of documented, relevant work experience with recognized credentials, which may include apprenticeship training.

History: En. Sec. 1, Ch. 724, L. 2023.

Part 4
Special Education for Exceptional Children

Part Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
Attendance of pupils at schools, Title 20, ch. 5, part 1.
Rights of persons with disabilities, Title 49, ch. 4.
Developmental disabilities, Title 53, ch. 20.

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) "Related services" means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) "State-operated adult health care facility providing special education services to its residents" means the Montana state hospital, the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

(6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 19, Ch. 16, L. 1991; amd. Sec. 3, Ch. 249, L. 1991; amd. Sec. 1, Ch. 356, L. 1993; amd. Sec. 19, Ch. 472, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 479, L. 2003; amd. Sec. 1, Ch. 44, L. 2011; amd. Sec. 6, Ch. 444, L. 2015.

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies must ensure and include but are not limited to:

(a) placement of a child with a disability in the least restrictive environment;

(b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;

(c) use of an evaluation team to identify a child with a disability and to plan individual education programs;

(d) an evaluation process consistent with the requirements of the Individuals With Disabilities Education Act; and

(e) other policies needed to ensure a free appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 255, L. 2005.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets

the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(13) contracting, pursuant to 20-7-435, for the provision of appropriate educational opportunity for a child receiving in-state inpatient treatment at a qualifying facility, including the provision of a free appropriate public education for a child with a disability.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 3, Ch. 765, L. 1991; amd. Sec. 2, Ch. 356, L. 1993; amd. Sec. 4, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 255, L. 2005; amd. Sec. 3, Ch. 371, L. 2021; amd. Sec. 1, Ch. 156, L. 2023.

Cross-References

Special education supervisor employed by Superintendent of Public Instruction, 20-3-103.
Board of Public Education policies, 20-4-102.
Issuance of teacher or specialist certificates, 20-4-103.
Classifications of teacher and specialist certificates, 20-4-106.

20-7-404. Cooperation of state agencies. (1) The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in:

(a) assisting school districts in discovering children in need of special education; and

(b) carrying out the provisions of Title 52, chapter 2, part 9.

(2) This section may not be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987; amd. Sec. 69, Ch. 546, L. 1995; amd. Sec. 4, Ch. 521, L. 2023.

20-7-405 through 20-7-410 reserved.

20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district or a state-operated adult health care facility providing special education services to its residents shall provide or establish and maintain a special education program for each child with a disability who is 5 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state, a school district, or a state-operated adult health care facility providing special education services to its residents to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, by participating in a regional services program, or by contracting for

services from qualified providers. A state-operated adult health care facility providing special education services to its residents may also meet its obligation by coordinating appropriate services with the resident's school district of residence, the local high school district, or both.

(6) The trustees of a school district or a state-operated adult health care facility providing special education services to its residents shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987; amd. Sec. 4, Ch. 249, L. 1991; amd. Sec. 3, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 3, Ch. 255, L. 2005; amd. Sec. 2, Ch. 44, L. 2011; amd. Sec. 3, Ch. 16, L. 2019.

Compiler's Comments

Implementation Contingency: Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act[, which inserted subsection (3),] if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child [now preschool child with disabilities] for school fiscal year 1991 and beyond."

Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

20-7-412. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979; amd. Sec. 5, Ch. 249, L. 1991.

20-7-413. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

20-7-414. Determination of children in need and type of special education needed. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, in accordance with 20-7-411, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals With Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985; amd. Sec. 17, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 249, L. 1991; amd. Sec. 4, Ch. 356, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 4, Ch. 255, L. 2005.

Cross-References

Guardians of minors, Title 72, ch. 5, part 2.

20-7-415. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817; amd. Sec. 10, Ch. 249, L. 1991.

20-7-416 through 20-7-418 reserved.

20-7-419. Rules. The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

(1) the calculation of tuition under 20-7-420;

(2) the various methods for the calculation and distribution of funds under the different circumstances provided in 20-7-435; and

(3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, residential treatment centers, therapeutic group homes, and public schools pursuant to 20-7-435.

History: En. Sec. 7, Ch. 375, L. 1993; amd. Sec. 2, Ch. 156, L. 2023; amd. Sec. 2, Ch. 364, L. 2025; amd. Sec. 1, Ch. 706, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 364, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 706, L. 2025. Amendment effective July 1, 2025.

20-7-420. Residency requirements — financial responsibility for special education. (1) Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215.

(2) The superintendent of public instruction is financially responsible for a portion of tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

History: En. Sec. 1, Ch. 470, L. 1979; amd. Sec. 4, Ch. 765, L. 1991; amd. Sec. 1, Ch. 375, L. 1993; amd. Sec. 10, Ch. 563, L. 1993; amd. Sec. 28, Ch. 509, L. 1995; amd. Sec. 5, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 6, Ch. 343, L. 1999; amd. Sec. 2, Ch. 132, L. 2005; amd. Sec. 5, Ch. 255, L. 2005; amd. Sec. 4, Ch. 463, L. 2005; amd. Sec. 1, Ch. 137, L. 2009; amd. Sec. 5, Ch. 211, L. 2011; amd. Sec. 4, Ch. 371, L. 2021.

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Financial obligations for tuition and transportation for a child with a disability attending a school district other than the child's resident school district are governed by Title 20, chapter 5, part 3.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979; amd. Sec. 5, Ch. 765, L. 1991; amd. Sec. 2, Ch. 375, L. 1993; amd. Sec. 11, Ch. 563, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 6, Ch. 431, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

20-7-422. Out-of-state placement of child with disability — payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with a disability, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with a disability who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with a disability who is in need of special education and related services is placed by a state agency in an out-of-state residential facility, the state agency making the placement shall pay the education costs resulting from the placement.

(4) The state agency shall place the child with a disability in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987; amd. Sec. 18, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 765, L. 1991; amd. Sec. 3, Ch. 375, L. 1993; amd. Sec. 12, Ch. 563, L. 1993; amd. Sec. 2, Ch. 458, L. 1995; amd. Sec. 6, Ch. 529, L. 1997; amd. Sec. 3, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.

20-7-423. Repealed. Sec. 13, Ch. 765, L. 1991.

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979; amd. Sec. 10, Ch. 249, L. 1991.

20-7-424. No tuition when attending state institution. Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.

History: **En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; amd. Sec. 13, Ch. 563, L. 1993.**

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-425 through 20-7-430 reserved.

20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education-related services personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, or the federal social security system or the costs for unemployment compensation insurance.

(5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations. However, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987; amd. Sec. 19, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 765, L. 1991; amd. Sec. 1, Ch. 466, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 1, Ch. 145, L. 2001; amd. Sec. 6, Ch. 255, L. 2005.

Cross-References

Limit on expenditures, 17-8-103.

Financing special education, 20-9-303.

20-7-432 through 20-7-434 reserved.

20-7-435. Funding of educational programs for eligible children receiving in-state inpatient treatment of serious emotional disturbances. (1) It is the intent of the legislature that eligible children receiving inpatient treatment of a serious emotional disturbance at in-state qualifying facilities be provided with an appropriate educational opportunity in a cost-effective manner. The legislature further intends that in-state qualifying facilities prioritize treatment of Montana residents over residents of other states.

(2) The superintendent of public instruction may contract with a qualifying facility for provision of an educational program for an eligible child in the qualifying facility. The contract between the superintendent of public instruction and a qualifying facility must include a provision requiring the qualifying facility to provide educational data and regular reports about the academic status and academic progress being made by each eligible child at a qualifying facility.

(3) (a) Whenever the superintendent of public instruction contracts with a qualifying facility for provision of an educational program for an eligible child, the superintendent of public instruction shall establish a daily rate per eligible child for each qualifying facility that reflects actual documented costs of providing an appropriate educational opportunity at that facility and that excludes the cost of services that are eligible for reimbursement under any provision of state or federal law or an insurance policy.

(b) For each eligible child and from appropriations provided for the purposes of this section, the superintendent of public instruction shall pay the qualifying facility the daily rate under subsection (3)(a) minus the amount paid under subsection (3)(c).

(c) For each eligible child, the eligible child's school district of residence shall pay the qualifying facility a daily rate of 40% of the tuition per-ANB amount as defined in 20-5-323 divided by 180 in a manner prescribed by the superintendent of public instruction. The district of residence shall finance the tuition amount from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees.

(d) An eligible child whose appropriate educational opportunity is provided under subsection (5)(a) or (5)(b) may not receive funding under this subsection (3).

(e) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a request for funding this section based on the daily rate for each facility as determined under subsection (3)(a). If the money appropriated for the payments to qualifying facilities under this section is not sufficient, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the payments.

(4) A supplemental education fee or tuition, beyond those authorized under this section, may not be charged for an eligible child who receives an education under contract with an in-state children's psychiatric hospital or residential treatment facility under subsection (3) or as provided under subsection (5).

(5) If a qualifying facility fails to provide an appropriate educational opportunity for an eligible child at the facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall, from appropriations provided for the purposes of this section, choose either of the following two options:

(a) provide for an appropriate educational opportunity for the eligible child utilizing qualified specialists who are employees of the office of public instruction or under contract with the office of public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance the reimbursement from the levy authorized to support the district tuition fund.

(b) negotiate with the school district in which the qualifying facility is located for the supervision and implementation of an appropriate educational opportunity for eligible children attending the facility. The amount to be paid to the district of attendance by the office of public instruction and the amount to be paid by the eligible child's district of residence are determined in the same manner as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d) and (1)(e).

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(7) The superintendent of public instruction shall report to the education interim budget committee and the education interim committee in accordance with 5-11-210 no later than September 30 of even-numbered years on the implementation of this section and an analysis that supports each daily rate. The report must include:

(a) the daily rate calculated for each qualifying facility as described in subsection (3)(a); and

(b) an evaluation of education programs at qualifying facilities funded under this section.

History: En. Sec. 9, Ch. 765, L. 1991; amd. Sec. 4, Ch. 375, L. 1993; amd. Sec. 51, Ch. 633, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 142, L. 2019; amd. Sec. 5, Ch. 371, L. 2021; amd. Sec. 3, Ch. 156, L. 2023; amd. Sec. 2, Ch. 706, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 706, L. 2025. Amendment effective July 1, 2025.

20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) "Appropriate educational opportunity" means:

(a) for an eligible child without a disability:

(i) if provided by a nonpublic school, an education program provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109; and

(ii) if provided by a public school, an education program consistent with accreditation standards provided for in 20-7-111; and

(b) for an eligible child with a disability, a free appropriate public education consistent with state standards for the provision of special education and related services.

(2) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(3) "Eligible child" means a Montana resident child or youth who is less than 19 years of age on September 10 of the school year and who has a serious emotional disturbance that is so severe that the child or youth has been placed in a qualifying facility for treatment.

(4) "Qualifying facility" means a children's psychiatric hospital, a residential treatment facility, a residential treatment center as defined in 50-5-101, or a therapeutic group home located in Montana.

(5) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with serious emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (5)(a)(iii) and (5)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(6) "Therapeutic group home" means an in-state treatment facility providing therapeutic services licensed and under contract with the department of public health and human services as a youth care facility, as defined in 52-2-602.

History: En. Sec. 10, Ch. 765, L. 1991; amd. Sec. 5, Ch. 375, L. 1993; amd. Sec. 34, Ch. 18, L. 1995; amd. Sec. 50, Ch. 418, L. 1995; amd. Sec. 70, Ch. 546, L. 1995; amd. Sec. 2, Ch. 479, L. 2003; amd. Sec. 4, Ch. 156, L. 2023; amd. Sec. 3, Ch. 364, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 364, L. 2025. Amendment effective October 1, 2025.

20-7-437. Renumbered 20-5-316. Sec. 21, Ch. 563, L. 1993.

20-7-438 through 20-7-440 reserved.

20-7-441. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.

20-7-442. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; amd. Sec. 4, Ch. 711, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. July 1992.

20-7-443. Financial assistance special education services for children under 6 years of age. Any district providing special education services for children under 6 years of age is eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816; amd. Sec. 7, Ch. 255, L. 2005.

Cross-References

Maximum general fund budget for special education, 20-9-321.

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

County transportation reimbursement, 20-10-146.

20-7-444 through 20-7-450 reserved.

20-7-451. Authorization to create full service education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services.

History: **En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.**

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.
Trustees to execute all contracts in name of school district, 20-9-213.
Educational cooperative agreements, Title 20, ch. 9, part 7.

20-7-452. Detailed contents of full service education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration, which may not be less than 3 years for purposes of providing special education services;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

History: **En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.**

Cross-References

School property, Title 20, ch. 6, part 6.
Contracts, Title 28, ch. 2.

20-7-453. Repealed. Sec. 14, Ch. 94, L. 2007.

History: **En. Sec. 3, Ch. 471, L. 1979.**

20-7-454. Final approval and filing of full service education cooperative contract. Prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

History: **En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991; amd. Sec. 4, Ch. 94, L. 2007.**

Cross-References

Filing fees of Secretary of State, 2-6-1006.
Fees of County Clerk, 7-4-2631.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract any material, personnel, or services that are within its legal power to furnish.

History: **En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991; amd. Sec. 5, Ch. 94, L. 2007.**

Cross-References

School property, Title 20, ch. 6, part 6.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.

Cross-References

Teacher tenure, 20-4-203.

20-7-457. Funding provisions for special education cooperatives. (1) The superintendent of public instruction shall pay directly to a special education cooperative the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(4) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(5) The superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(6) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

History: En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993; amd. Sec. 6, Ch. 94, L. 2007; amd. Sec. 3, Ch. 9, L. 2019.

Cross-References

Joint board organization and voting membership, 20-3-361.

20-7-458. Repealed. Secs. 9, 10(2), Ch. 466, L. 1993.

History: En. Sec. 5, Ch. 343, L. 1989; amd. Sec. 7, Ch. 136, L. 1991.

20-7-459 and 20-7-460 reserved.

20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. Within 10 days of determining that a child is in need of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in

relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the location of the parents is discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue the appointment.

History: **En. Sec. 5, Ch. 618, L. 1985; amd. Sec. 7, Ch. 249, L. 1991; amd. Sec. 5, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 16, L. 2003; amd. Sec. 8, Ch. 255, L. 2005.**

Cross-References

Montana Youth Court Act, Title 41, ch. 5.

20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which the person is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and other programs that may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever the assistance is in the best interest of the child.

History: **En. Sec. 6, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 305, Ch. 56, L. 2009.**

20-7-463. Surrogate parent — immunity from liability — reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by the person in the capacity as a surrogate parent except an act or omission that is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of the surrogate parent's duties, as prescribed by rules adopted by the superintendent of public instruction.

History: **En. Sec. 7, Ch. 618, L. 1985; amd. Sec. 306, Ch. 56, L. 2009.**

20-7-464 through 20-7-468 reserved.

20-7-469. Dyslexia — definition — screening — intervention. (1) This section may be cited as the "Montana Dyslexia Screening and Intervention Act".

(2) For the purposes of this section, "dyslexia" means a specific learning disability that is neurological in origin and characterized by difficulties with accurate or fluent word recognition

and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

(3) (a) In alignment with the existing requirements of the Individuals With Disabilities Education Act, rules of the board of public education, and rules of the superintendent of public instruction, school districts shall establish procedures to ensure that all resident children with disabilities, including specific learning disabilities resulting from dyslexia, are identified and evaluated for special education and related services as early as possible.

(b) To support the goal of the people of Montana to develop the full educational potential of each person, articulated in Article X, section 1(1), of the Montana constitution, and to ensure early identification and intervention for students with dyslexia, a school district shall utilize a screening instrument aimed at identifying students at risk of not meeting grade-level reading benchmarks. The screening instrument must:

(i) be administered to:

(A) a child in the first year that the child is admitted to a school of the district up to grade 2; and

(B) a child who has not been previously screened by the district and who fails to meet grade-level reading benchmarks in any grade;

(ii) be administered by an individual with an understanding of, and training to identify, signs of dyslexia; and

(iii) be designed to assess developmentally appropriate phonological and phonemic awareness skills.

(c) If a screening under subsection (3)(b) suggests that a child may have dyslexia or a medical professional diagnoses a child with dyslexia, the child's school district shall take steps to identify the specific needs of the child and implement best practice interventions to address those needs. This process may lead to consideration of the child's qualification as a child with a disability under the Individuals With Disabilities Education Act.

(4) The office of public instruction shall:

(a) endeavor to raise statewide awareness of dyslexia, as well as the attendant rights of students and parents and the responsibilities of school districts related to dyslexia; and

(b) provide guidance to school districts related to:

(i) the early identification of students with dyslexia, including best practices for universal, valid, and reliable screening methods and other assessments in support of the requirements of subsection (3)(b) that:

(A) have minimal or no cost to a district; and

(B) are able to be integrated with a district's existing reading programs;

(ii) best practice interventions to support students with dyslexia as early as possible, including interventions for those students with dyslexia evaluated as requiring special education and those students with dyslexia evaluated as not requiring special education; and

(iii) best practices for collaborating with and supporting parents of students with dyslexia.

(5) The legislature urges all entities within the state with authority over, or a role to play in, teacher preparation and professional development to ensure that teachers and other school personnel, especially those in the early grades, are well prepared to identify and serve students with dyslexia.

History: En. Sec. 1, Ch. 227, L. 2019; amd. Sec. 50, Ch. 261, L. 2021.

20-7-470. Blind persons' literacy rights and education — short title. Sections 20-7-470 through 20-7-475 may be cited as the "Blind Persons' Literacy Rights and Education Act".

History: En. Sec. 1, Ch. 490, L. 2005.

20-7-471. Blind persons' literacy rights and education — definitions. As used in 20-7-470 through 20-7-475, unless the context requires otherwise, the following definitions apply:

(1) "Blind or visually impaired child" means an individual who is eligible for special education services and who:

(a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

(b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a).

(2) "Braille" means the system of reading and writing through touch, commonly known as standard English Braille.

(3) "Individualized education program" means a written statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11).

History: En. Sec. 2, Ch. 490, L. 2005.

20-7-472. Individualized education program for child with blindness. The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. Sec. 3, Ch. 490, L. 2005.

20-7-473. Standards of competency and instruction — Braille reading and writing. Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. Sec. 4, Ch. 490, L. 2005.

20-7-474. Instructional materials and Braille equipment — Braille equipment loan program. The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program.

History: En. Sec. 5, Ch. 490, L. 2005.

20-7-475. Blind persons' literacy rights and education — personnel training. The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.

History: En. Sec. 6, Ch. 490, L. 2005.

20-7-476. Emotional disability — terms. The term "emotional disability" may be used in place of the term "emotional disturbance" as defined in 34 CFR 300.8(c)(4), as that term relates to the provision of special education services, when used in the Montana Code Annotated or the Administrative Rules of Montana.

History: En. Sec. 1, Ch. 740, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 740, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 5
Traffic Education

Part Cross-References

National defense highway plans and drivers' training, 10-3-107.
Highway traffic safety administration, 61-2-103.
Licensure of persons 15 years of age upon completion of driver's education, 61-5-105.
Instruction and traffic education permits and temporary licenses, 61-5-106.
Traffic regulation, Title 61, ch. 8.
Violation of safety patrol signals, 61-8-502.

20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(2) "Traffic education" means instruction in motor vehicle, bicycle, pedestrian, and school bus traffic laws or motorcycle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of bicycles and motor vehicles or motorcycles. The instruction must be designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.

(3) "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

(4) "Traffic education course" means a course of traffic education that has been approved by the superintendent of public instruction.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 428, L. 1991; amd. Sec. 4, Ch. 701, L. 1991; amd. Sec. 3, Ch. 181, L. 1999.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

(1) develop, administer, and supervise a program of instruction in traffic education;

(2) establish basic course requirements in instruction for traffic education;

(3) establish the qualifications for a teacher of traffic education;

(4) approve teachers of traffic education when the teachers are qualified;

(5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when the courses meet the criteria for approval, including a commercially available private traffic education course;

(7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;

(8) assist districts with the conduct of traffic education;

(9) periodically conduct onsite driver education program reviews;

(10) establish any alternative course requirements necessary to allow a district to provide an online or distance learning classroom component for a traffic education course pursuant to 20-7-503(2)(a); and

(11) establish any alternative course requirements necessary to allow the student's parents or guardian to instruct the student in the hands-on driving component of a traffic education course pursuant to 20-7-503(2)(b).

History: En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904; amd. Sec. 5, Ch. 701, L. 1991; amd. Sec. 4, Ch. 181, L. 1999; amd. Sec. 1, Ch. 450, L. 2021.

20-7-503. District establishment of traffic education program. (1) The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

(a) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;

(b) taught by a teacher of traffic education;

(c) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and

(d) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

(2) (a) A school district may offer the classroom portion of a traffic education course through an online or distance learning platform.

(b) When a student completes the classroom portion of a traffic education course pursuant to subsection (2)(a), the student is authorized to take the hands-on driving portion of the traffic education course under the instruction of the student's parent or guardian.

History: En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905; amd. Sec. 2, Ch. 450, L. 2021.

20-7-504. State traffic education account — proceeds earmarked for account — transmittal. (1) There is a traffic education account in the treasury of the state of Montana.

(2) When a county is required to transmit fees directly to the department of revenue, the gross proceeds, including the portion of the fees to be credited to the traffic education account, must be transmitted to the department of revenue and the appropriate portion must be deposited in the traffic education account.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 701, L. 1991; amd. Sec. 2, Ch. 11, Sp. L. July 1992; amd. Sec. 3, Ch. 39, Sp. L. November 1993; amd. Sec. 29, Ch. 509, L. 1995; amd. Sec. 111, Ch. 42, L. 1997; amd. Sec. 5, Ch. 181, L. 1999; amd. Sec. 10, Ch. 237, L. 2001; amd. Sec. 47, Ch. 257, L. 2001.

Cross-References

Instruction permits — traffic education learner licenses and permits — temporary licenses, 61-5-106.
Fees for licenses, 61-5-111, 61-5-114.
Penalties for violation of traffic laws, Title 61, ch. 8, part 7.
Disposition of fines and forfeitures, 61-12-701.

20-7-505. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903; amd. Sec. 2, Ch. 487, L. 1981; amd. Sec. 14, Ch. 557, L. 1987.

20-7-506. Annual allocation and distribution of traffic education account proceeds. (1) Subject to the provisions of subsection (2), the superintendent of public instruction shall annually order the distribution of all money in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education money must be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts must be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before the funds in the traffic education account are disbursed, there must be appropriated to the superintendent of public instruction funds to administer the statewide traffic education program for eligible, young, novice drivers. The administration may include:

(a) supervision and assessment of approved traffic education courses;

(b) preparation for teachers of traffic education;

(c) development, printing, and distribution of essential instructional materials for traffic education; and

(d) any other activities considered necessary by the superintendent of public instruction, provided that the money is available only to support traffic education for young, novice drivers.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906; amd. Sec. 4, Ch. 39, Sp. L. November 1993; amd. Sec. 30, Ch. 509, L. 1995.

20-7-507. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. All nontax receipts for traffic education must be deposited in the district's traffic education fund. The expenditure of the money deposited in the district's traffic education fund is not subject to the budgeting provisions of this title, and the money may be expended for traffic education.

History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907; amd. Sec. 5, Ch. 39, Sp. L. November 1993.

Cross-References

Traffic education fund, 20-9-510.

20-7-508 and 20-7-509 reserved.

20-7-510. Renumbered 20-25-1003. Sec. 14(2), Ch. 181, L. 1999.

20-7-511. Renumbered 20-25-1004. Sec. 14(2), Ch. 181, L. 1999.

20-7-512. Renumbered 20-25-1005. Sec. 14(2), Ch. 181, L. 1999.

20-7-513. Renumbered 20-25-1006. Sec. 14(2), Ch. 181, L. 1999.

20-7-514. Renumbered 20-25-1007. Sec. 14(2), Ch. 181, L. 1999.

Part 6
Textbook Regulation

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.
Textbook and textbook dealer defined, 20-1-101.
Conflict of interest, 20-1-205.
School property, Title 20, ch. 6, part 6.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.

Cross-References

Free education to be provided, Art. X, sec. 1, Mont. Const.

20-7-602. Textbook selection and adoption. (1) Textbooks must be selected by the district superintendent or by the school principal if there is no district superintendent. The selections are subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

(2) In selecting textbooks, the district shall ensure that the materials are made available to each blind or visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603; amd. Sec. 7, Ch. 490, L. 2005.

Cross-References

Blind Persons' Literacy Rights and Education Act, 20-7-470 through 20-7-475.

20-7-603. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.

Cross-References

School officers not to act as agents, 20-1-201.

20-7-604. Licensing textbook dealers. (1) Textbook dealers must be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction the dealer's written agreement to:

(a) guarantee that textbooks must be supplied to any district at the listed, uniform sales prices in effect for schools, except that the prices may be reduced in accordance with this section;

(b) guarantee that at no time will any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) (a) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond must run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond must be set by the superintendent of public instruction and may not be less than $2,000 or more than $10,000. It is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(b) The secretary of state may charge a fee for the filing of the surety bond required under this section. The fee must be set by rule and deposited in accordance with 2-15-405.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: **En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605; amd. Sec. 7, Ch. 94, L. 2007; amd. Sec. 1, Ch. 69, L. 2015.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-605. Notification and processing of complaint against licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify the error within 30 days of the notification of the finding of a violation, the dealer shall forfeit the dealer's surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount recovered must be paid into the state general fund.

History: **En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607; amd. Sec. 31, Ch. 509, L. 1995.**

20-7-606. Doing business without textbook dealer's license — penalty. A textbook dealer who sells or offers for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of the misdemeanor, the person shall be fined not less than $500 or more than $2,000.

History: **En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608; amd. Sec. 307, Ch. 56, L. 2009.**

20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, the dealer shall forfeit the dealer's surety bond and license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of the licensed textbook dealer and for revocation of the dealer's license.

History: **En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609; amd. Sec. 308, Ch. 56, L. 2009.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) A textbook dealer or the dealer's agent may not offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) A trustee, county superintendent, or school employee may not accept any emolument or other inducement from a textbook dealer or agent of the dealer for the use of the official's or employee's influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section is a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of the misdemeanor must be removed from the officer's or employee's position.

(4) This section may not be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: **En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610; amd. Sec. 309, Ch. 56, L. 2009.**

Cross-References

Trustee removal, 20-3-310.
Personal immunity and liability of trustees, 20-3-332.
Official misconduct, 45-7-401.
Misdemeanor — no penalty specified, 46-18-212.

Part 7
Adult Education

Part Cross-References

High school equivalency — certification, 20-7-131.

20-7-701. Definition of adult basic education and adult education. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult basic education" means instruction in basic skills, such as reading, writing, arithmetic, and other skills required to function in society, offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) "Adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation and the provision of advanced opportunities to qualified pupils pursuant to Title 20, chapter 7, part 15.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 13, Ch. 308, L. 1995; amd. Sec. 5, Ch. 279, L. 2019.

Cross-References

ANB defined, 20-1-101.
Calculation of average number belonging (ANB), 20-9-311.

20-7-702. Authorization to establish adult education programs. The trustees of a district or a community college district created prior to January 1, 2021, may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, career and technical education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513; amd. Sec. 12, Ch. 133, L. 2001; amd. Sec. 1, Ch. 171, L. 2011; amd. Sec. 6, Ch. 351, L. 2021.

20-7-703. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.

20-7-704. Adult education tuition and fees. The trustees of a district or a community college district created prior to January 1, 2021, may charge tuition for instruction and charge fees for the use of equipment and materials. The amount of the tuition and fees must be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees must be deposited in the adult education fund.

History: En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516; amd. Sec. 7, Ch. 351, L. 2021.

20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or a community college district created prior to January 1, 2021. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981; amd. Sec. 9, Ch. 555, L. 1991; amd. Sec. 5, Ch. 568, L. 1991; amd. Sec. 5, Ch. 133, L. 1993; amd. Sec. 1, Ch. 34, Sp. L. November 1993; amd. Sec. 1, Ch. 38, L. 1995; amd. Sec. 2, Ch. 211, L. 1997; amd. Sec. 6, Ch. 430, L. 1997; amd. Sec. 103, Ch. 584, L. 1999; amd. Sec. 3, Ch. 220, L. 2001; amd. Sec. 115, Ch. 574, L. 2001; amd. Sec. 5, Ch. 152, L. 2011; amd. Sec. 8, Ch. 351, L. 2021.

Cross-References

School budgets, Title 20, ch. 9, part 1.
Administration of finances, Title 20, ch. 9, part 2.

20-7-706 through 20-7-710 reserved.

20-7-711. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

20-7-712. Repealed. Sec. 1, Ch. 290, L. 2025.

History: En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1; amd. Sec. 1, Ch. 148, L. 2001; amd. Sec. 2, Ch. 171, L. 2011.

20-7-713. Adult education fund operating reserve. At the end of each school fiscal year, the trustees of a school district that operates an adult education program may designate the portion of the adult education end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying, whenever a cash flow shortage occurs, adult education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult education fund balance that is earmarked as operating reserve may not exceed 35% of the final adult education fund budget for the ensuing school fiscal year.

History: En. Sec. 1, Ch. 120, L. 1981; amd. Sec. 6, Ch. 568, L. 1991; amd. Sec. 6, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

20-7-714. County adult literacy programs — authorization to levy tax and establish fund. (1) (a) Subject to 15-10-420, the governing body of a county may, in its discretion, establish a fund and levy a tax on the taxable value of all taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are 16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

History: En. Sec. 1, Ch. 792, L. 1991; amd. Sec. 1, Ch. 264, L. 1997; amd. Sec. 104, Ch. 584, L. 1999; amd. Sec. 116, Ch. 574, L. 2001.

Part 8
Public Recreation

Part Cross-References

Culture, social services, and recreation, Title 7, ch. 16.
Recreation, Title 23, ch. 2.
Shared-use paths, Title 60, ch. 3, part 3.

20-7-801. Public recreation program authorized. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.
Use of park funds for public recreation, 7-16-4107.

20-7-802. How program operated — independently or cooperatively — delegation. Any city, town, school district, or any board thereof, including a board of park commissioners, may:

(1) (a) operate such a program independently; or

(b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or

(2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

History: En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-7-803. Authority to accept gifts. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

(1) property under its custody and management;

(2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(3) private property, with the consent of its owners.

History: En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.

20-7-804. Authority of board of public education. In all cases where school property is utilized, the board of public education shall have authority:

(1) to establish minimum qualifications of local recreational directors and instructors; and

(2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

History: En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.

20-7-805. Recreational use of school facilities secondary. The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

History: En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.

Part 9
Gifted and Talented Children

Part Cross-References
Board of Public Education — policies on gifted and talented children, 20-2-121.

20-7-901. Definitions. As used in this part the following definitions apply:

(1) "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) "Professionally qualified persons" means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies.

History: **En Sec. 1, Ch. 310, L. 1979.**

20-7-902. Identification of gifted and talented children. (1) A school district shall provide educational services to gifted and talented students that are commensurate to student needs and foster a positive self-image.

(2) A school district shall provide structured support and assistance to teachers in identifying and meeting the diverse student needs of gifted and talented students and a framework for considering a full range of alternatives for addressing student needs.

History: **En Sec. 2, Ch. 310, L. 1979; amd. Sec. 1, Ch. 150, L. 2021.**

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding. (1) The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.

(2) Proposals approved by the superintendent of public instruction in accordance with policies of the board of public education must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

History: **En Sec. 3, Ch. 310, L. 1979; amd. Sec. 2, Ch. 312, L. 1983.**

20-7-904. Review and recommendations of proposals — reporting. (1) The policies of the board of public education must ensure that program proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals.

(4) The office of public instruction shall report to the governor and the legislature in accordance with 5-11-210 on the status and effectiveness of programs serving gifted and talented students. The report must include:

(a) the total number of schools applying for and receiving funds from the office of public instruction for gifted and talented programs pursuant to 20-7-903 and a breakdown by school size;

(b) a description of the ways in which districts applying for funds report meeting the requirements to include a child's parents in the gifted and talented evaluation process, pursuant to 20-7-902;

(c) the total number of students districts report evaluating for gifted and talented programs and the total number of students identified as gifted and talented;

(d) a description of the training provided by districts to teachers of gifted and talented students;

(e) a description of services provided by districts to gifted and talented students; and

(f) an evaluation of the effectiveness of gifted and talented programs, including measures such as:

(i) measures of student achievement or growth;

(ii) indicators of student and parent satisfaction with the programs; or

(iii) other gauges of program quality as determined by the office of public instruction.

History: En Sec. 4, Ch. 310, L. 1979; amd. Sec. 3, Ch. 312, L. 1983; amd. Sec. 1, Ch. 93, L. 2019; amd. Sec. 51, Ch. 261, L. 2021.

Part 10
Distance Learning
(Repealed)

20-7-1001. Repealed. Sec. 8, Ch. 622, L. 1991.

History: En. Sec. 52, Ch. 11, Sp. L. June 1989.

Part 11
Earthquake Emergency Procedures
(Repealed)

20-7-1101. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 1, Ch. 534, L. 1991.

Part 12
Montana Digital Academy

Part Cross-References

Basic system of free quality public elementary and secondary schools, 20-9-309.
Calculation of average number belonging (ANB), 20-9-311.
University system, Title 20, ch. 25.

20-7-1201. Montana digital academy — purposes — governance. (1) There is a Montana digital academy at a unit of the Montana university system. The purpose of the Montana digital academy is to enhance the state's system of education and support the development of the full educational potential of each person consistent with the provisions of Article X, section 1(1), of the Montana constitution.

(2) The Montana digital academy shall:

(a) make remote instruction opportunities available to all school-age children through public school districts in the state, including students who are enrolled on a part-time basis. Remote instruction opportunities provided through the academy must include:

(i) remote instruction developed in Montana and provided by highly qualified educators licensed in Montana; and

(ii) additional high-quality remote instruction offerings through the Montana digital academy clearinghouse under 20-7-1203.

(b) maximize access to high-quality remote instruction through flexibility in licensure and endorsement. Remote instructors may include teachers who are licensed and endorsed in Montana or elsewhere in the area of instruction taught. When the remote instructor is not licensed and endorsed in Montana or elsewhere, the school district providing remote instruction through the academy shall assign an individual with a class 1, 2, 3, or 4 license under 20-4-106 to facilitate pupil access to the remote instruction.

(c) provide courses that empower pupils to become community, college, and career ready, including but not limited to:

(i) core subject matters required under accreditation standards or school board policy;

(ii) innovative educational programs, as defined in 15-30-3102; and

(iii) proficiency-based courses.

(3) The Montana digital academy is governed by a board as follows:

(a) The voting members of the governing board include:

(i) a member of the board of regents or a designee;

(ii) a member of the board of public education or a designee;

(iii) the superintendent of public instruction or a designee;

(iv) a trustee of a Montana school district appointed by the governor from a list of three candidates provided by a state professional organization of school district trustees; and

(v) the governor or a designee

(b) The nonvoting members of the governing board include:

(i) a member of the senate appointed by the president of the senate in consultation with the presiding officer of the senate education standing committee and the vice presiding officer of the joint appropriations education standing subcommittee;

(ii) a member of the house of representatives appointed by the speaker of the house of representatives in consultation with the presiding officer of the house of representatives education standing committee and the presiding officer of the joint appropriations education standing subcommittee;

(iii) a Montana-licensed and Montana-endorsed classroom teacher appointed by the voting members of the governing board;

(iv) a Montana-licensed school district administrator appointed by the voting members of the governing board in consultation with a state professional organization of school administrators; and

(v) the program director provided for in subsection (5).

(4) The governing board shall select one of the legislators appointed pursuant to subsection (3)(b)(i) or (3)(b)(ii) to be the presiding officer of the governing board and select a vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director. The program director shall develop and, upon approval of the governing board, implement and publish policies and guidelines for the Montana digital academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program.

(6) The governing board shall provide a biennial report to the education interim committee and education interim budget committee in accordance with the provisions of 5-11-210. The report must include but is not limited to the following information:

(a) the number of students served and number of enrollments;

(b) a list of school districts served, including data about size and geographic location of the districts served;

(c) the number and type of courses offered, including a breakdown of:

(i) regular courses;

(ii) dual credit, advanced placement, and college courses;

(iii) credit recovery courses; and

(iv) courses offering industry-recognized credentials;

(d) the number of credits earned, including a breakdown of:

(i) regular credits;

(ii) dual credit, advanced placement, and college credits;

(iii) credit recovery credits;

(iv) industry-recognized credentials; and

(v) career and technical education credits;

(e) information about third-party services provided through the clearinghouse and a breakdown of enrollments in Montana digital academy courses compared to enrollments in third-party courses;

(f) results of student satisfaction surveys; and

(g) any recommendations for proposed legislation.

History: En. Sec. 1, Ch. 417, L. 2009; amd. Sec. 14, Ch. 19, L. 2011; amd. Sec. 6, Ch. 418, L. 2011; amd. Sec. 1, Ch. 142, L. 2015; amd. Sec. 1, Ch. 537, L. 2023.

20-7-1202. Funding — rulemaking authority. (1) (a) In addition to any amount appropriated to the Montana digital academy by the legislature, beginning July 1, 2016, school districts enrolling students at the digital academy shall pay to the digital academy any supplemental fee established by the digital academy that is required to pay for the prorated costs of course delivery that exceed the amount appropriated to the digital academy by the legislature. The fee must be established by the governing board of the digital academy by rule and must be commensurate with the costs of operating the digital academy that exceed the appropriation provided by the legislature.

(b) Fees collected under subsection (1)(a) may be spent only on the operating costs of the digital academy.

(c) The governing board of the digital academy shall adopt rules regarding the establishment of any fees required under subsection (1)(a).

(2) A school district is prohibited from charging a fee to a student who enrolls in a class provided by the Montana digital academy that the school district requires for graduation.

History: En. Sec. 2, Ch. 142, L. 2015.

20-7-1203. Montana digital academy clearinghouse. (1) There is a Montana digital academy clearinghouse. The purpose of the clearinghouse is to provide additional choice and flexibility to build local capacity for serving pupils with remote instruction courses, models, and materials.

(2) The Montana digital academy staff shall develop a clearinghouse interface to provide pupils with access to additional course providers, content, services, and formats. The clearinghouse must provide access to the full range of offerings available through the Montana digital academy.

(3) Services provided through the clearinghouse must include at a minimum but are not limited to:

(a) digital content and platform services;

(b) courses fostering community, college, and career readiness for pupils, including courses to:

(i) satisfy promotion and graduation requirements of the board of public education and the local school district;

(ii) provide access to college credit through direct access to college courses, advanced placement courses, and dual credit courses; and

(iii) provide access to industry-recognized credentials;

(c) third-party services; and

(d) proficiency assessment services.

(4) In administering the clearinghouse, the Montana digital academy staff shall:

(a) select, evaluate, and monitor high-quality providers, courses, and services; and

(b) provide technical assistance on the offered services.

History: En. Sec. 2, Ch. 537, L. 2023.

Part 13
Protection and Wellness of Youth

20-7-1301. Purpose — intent — immunity. (1) The legislature finds that protecting youth athletes from serious injury is a compelling state interest. The purpose of 20-7-1301 through 20-7-1304 is to prevent permanent injury and death to youth athletes in the state of Montana. To further this interest, the legislature finds:

(a) concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities;

(b) a concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull;

(c) the risks of catastrophic injuries or death are significant when a concussion or brain injury is not properly evaluated and managed;

(d) concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works;

(e) concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, with the ground, or with obstacles;

(f) concussions occur with or without loss of consciousness; and

(g) continuing to play with a concussion or symptoms of brain injury leaves the youth athlete especially vulnerable to greater injury and even death.

(2) (a) Sections 20-7-1301 through 20-7-1304 do not create a new cause of action.

(b) A person acting in an individual capacity and not on behalf of the state or any political subdivision of the state who volunteers to assist with an organized youth athletic activity is not liable for civil damages arising out of an act or omission relating to the requirements of 20-7-1301 through 20-7-1304. This subsection (2)(b) does not apply to liability for willful or wanton misconduct.

History: **En. Sec. 2, Ch. 260, L. 2013; amd. Sec. 1, Ch. 331, L. 2017.**

20-7-1302. Definitions. As used in 20-7-1301 through 20-7-1304, the following definitions apply:

(1) "Concussion" means an injury to the brain arising from blunt trauma, an acceleration force, or a deceleration force, which may include one of the following observed or self-reported conditions attributable to the injury:

(a) transient confusion, disorientation, or impaired consciousness;
(b) dysfunction of memory;
(c) loss of consciousness; or
(d) signs of other neurological or neuropsychological dysfunction, including:
(i) increased irritability;
(ii) lethargy;
(iii) vomiting;
(iv) headache;
(v) dizziness;
(vi) fatigue;
(vii) decreased balance; and
(viii) seizures.

(2) "Licensed health care professional" means a registered, licensed, certified, or otherwise statutorily recognized health care professional whose training includes the evaluation and management of concussions consistent with current medical knowledge.

(3) (a) "Organized youth athletic activity" means an athletic activity organized or sponsored by a school district, nonpublic school, or youth athletic organization in which the participants are engaged in an athletic game or competition against another team, club, or entity, in practice, tryouts, training exercises, or sports camps, or in preparation for an athletic game or competition against another team, club, or entity.

(b) The term does not include recess or physical education classes conducted by a school district or nonpublic school.

(4) "Youth athlete" means an individual who is an active participant in an organized youth athletic activity.

(5) "Youth athletic organization" means any entity that organizes or sponsors an organized youth athletic activity.

History: **En. Sec. 3, Ch. 260, L. 2013; amd. Sec. 2, Ch. 331, L. 2017.**

20-7-1303. Youth athletes — concussion education requirements. (1) Each school district, nonpublic school, or youth athletic organization in this state offering organized youth athletic activities shall adopt policies and procedures to inform coaches, officials, youth athletes, and parents or guardians of the nature and risk of brain injuries, including the effects of continuing to play after a concussion. The policies, content, and protocols must be consistent with current medical knowledge as to:

(a) the nature and risk of brain injuries associated with athletic activity;

(b) the signs, symptoms, and behaviors consistent with a brain injury;

(c) the need to alert a licensed health care professional for urgent recognition and treatment when a youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion; and

(d) the need to follow proper medical direction and protocols for treatment and returning to play after a youth athlete sustains a concussion.

(2) A form documenting that educational materials referred to in subsection (1) have been provided to and viewed by each youth athlete and the youth athlete's parent or guardian must be signed by each youth athlete and the youth athlete's parent or guardian and returned to an official designated by the school district, nonpublic school, or youth athletic organization prior to the youth athlete's participation in organized youth athletic activities. The form must apply for a period not to exceed 1 year.

(3) School districts, nonpublic schools, and youth athletic organizers shall ensure access to a training program consistent with subsection (1). Each coach and official participating in organized youth athletic activities shall complete the training program at least once each year.

(4) School districts, nonpublic schools, and youth athletic organizations may invite the participation of appropriate advocacy groups and appropriate sports governing bodies to facilitate the requirements of subsections (1) through (3).

History: **En. Sec. 4, Ch. 260, L. 2013; amd. Sec. 3, Ch. 331, L. 2017.**

20-7-1304. Youth athletes — removal from participation following concussion — medical clearance required before return to participation. (1) An athletic trainer, coach, or official shall remove a youth athlete from participation in any organized youth athletic activity at the time the youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion.

(2) A youth athlete who has been removed from participation in an organized youth athletic activity after exhibiting signs, symptoms, or behaviors consistent with a concussion may not return to organized youth athletic activities until the youth athlete:

(a) no longer exhibits signs, symptoms, or behaviors consistent with a concussion; and

(b) receives an evaluation by a licensed health care professional and receives written clearance to return to play from the licensed health care professional. The written clearance must state:

(i) that the licensed health care professional has evaluated the youth athlete; and

(ii) that in the licensed health care professional's opinion, the youth athlete is capable of safely resuming participation in organized youth athletic activities.

History: **En. Sec. 5, Ch. 260, L. 2013.**

20-7-1305. *(Temporary)* **Short title.** Sections 20-7-1305 through 20-7-1307 may be cited as the "Save Women's Sports Act". *(Void on occurrence of contingency—sec. 6, Ch. 405, L. 2021.)*

History: **En. Sec. 1, Ch. 405, L. 2021.**

Compiler's Comments

Contingent Voidness: Section 6, Ch. 405, L. 2021, provided: "[This act] is void 21 days after the date the United States secretary of education files a written report with the proper committees of the United States house of representatives and the United States senate as required by 34 CFR 100.8(c) due to the enforcement of [this act]."

20-7-1306. *(Temporary)* **Designation of athletic teams.** (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex:

(a) males, men, or boys;
(b) females, women, or girls; or
(c) coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

(3) For the purposes of this section, "female", "male", and "sex" are defined in 1-1-201. *(Void on occurrence of contingency—sec. 6, Ch. 405, L. 2021.)*

History: En. Sec. 2, Ch. 405, L. 2021; amd. Sec. 8, Ch. 685, L. 2023.

Compiler's Comments

Contingent Voidness: Section 6, Ch. 405, L. 2021, provided: "[This act] is void 21 days after the date the United States secretary of education files a written report with the proper committees of the United States house of representatives and the United States senate as required by 34 CFR 100.8(c) due to the enforcement of [this act]."

20-7-1307. *(Temporary)* **Cause of action.** (1) A student who is deprived of an athletic opportunity or who suffers any direct or indirect harm as a result of a violation of 20-7-1305 through 20-7-1307 may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher education.

(2) A student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of 20-7-1305 through 20-7-1307 to an employee or representative of the school, institution, or athletic association or organization or to any state or federal agency with oversight of schools or institutions of higher education in Montana may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(3) A school or institution of higher education that suffers any direct or indirect harm as a result of a violation of 20-7-1305 through 20-7-1307 may bring a cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization. *(Void on occurrence of contingency—sec. 6, Ch. 405, L. 2021.)*

History: En. Sec. 3, Ch. 405, L. 2021.

Compiler's Comments

Contingent Voidness: Section 6, Ch. 405, L. 2021, provided: "[This act] is void 21 days after the date the United States secretary of education files a written report with the proper committees of the United States house of representatives and the United States senate as required by 34 CFR 100.8(c) due to the enforcement of [this act]."

20-7-1308 and 20-7-1309 reserved.

20-7-1310. Youth suicide awareness and prevention training. (1) This section may be cited as the "Suicide Awareness and Prevention Training Act".

(2) The office of public instruction shall provide guidance and technical assistance to Montana schools on youth suicide awareness and prevention training materials. All training materials offered must be approved by the office of public instruction, meet the standards for professional development in the state, and be periodically reviewed by a qualified person or committee for consistency with generally accepted principles of youth suicide awareness and prevention training. The office of public instruction, in consultation with the department of public health and human services, shall ensure low-cost and no-cost training options for schools.

(3) Youth suicide awareness and prevention training must be made available annually to each employee of a school district and to staff of the office of public instruction who work directly with any students enrolled in Montana public schools. The training must be provided at no cost to the employee. The training may be offered through any method of training identified in subsection (4).

(4) Employees under subsection (3) shall take at least 1 hour of youth suicide awareness and prevention training every 3 years. Appropriate methods for delivery of the training include:

(a) in-person attendance at a live training;
(b) videoconference;
(c) an individual program of study of designated materials;
(d) self-review modules available online; and

(e) any other method chosen by the local school board that is consistent with professional development standards.

(5) The trustees of a school district shall establish policies, procedures, or plans related to suicide prevention and response. The policies, procedures, or plans must include a description of the youth suicide awareness and prevention training requirements for school district employees pursuant to subsections (3) and (4).

(6) No cause of action may be brought for any loss or damage caused by any act or omission resulting from the implementation of the provisions of this section or resulting from any training or lack of training related to this section. Nothing in this section may be construed to impose a specific duty of care.

History: En. Secs. 1, 2, Ch. 351, L. 2015; amd. Sec. 1, Ch. 256, L. 2017; amd. Sec. 1, Ch. 392, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 392, L. 2025. Amendment effective July 1, 2025.

20-7-1311. Child sexual abuse awareness and prevention. (1) The office of public instruction is encouraged to develop and maintain model school district policies and procedures for child sexual abuse awareness, prevention, response, and reporting.

(2) The office of public instruction shall make any model policies and procedures developed under subsection (1) available for voluntary adoption by school district trustees.

(3) Any model policies and procedures developed under subsection (1) may include the following topics:

(a) basic principles of child sexual abuse prevention;

(b) warning signs of a child who is being sexually abused;

(c) actions that a child who is a victim of sexual abuse may take to obtain assistance;

(d) counseling options;

(e) educational support available for a child who is a victim of sexual abuse to enable the child to develop the child's full educational potential; and

(f) response and reporting procedures.

History: En. Sec. 1, Ch. 218, L. 2017.

20-7-1312 through 20-7-1314 reserved.

20-7-1315. First aid training in schools. (1) The office of public instruction shall, in consultation with school districts, the department of public health and human services, the American heart association, and the American red cross, provide guidance and technical support and make available a program of study to Montana schools on:

(a) basic first aid;

(b) basic cardiopulmonary resuscitation; and

(c) the use of automated external defibrillators.

(2) The guidance and program of study under subsection (1) must comply with current evidence-based guidance from the American heart association or another national science organization. The office of public instruction shall annually notify high school and K-12 school districts during the month of August in writing or electronically of the availability and any updating of the guidance and program of study under subsection (1).

(3) School districts are encouraged to incorporate the program of study under subsection (1) during health enhancement courses during high school as required in the accreditation standards and to include in the program of study hands-on practicing of cardiopulmonary resuscitation.

(4) A school district and the office of public instruction may accept from any person, public entity, or other legal entity in-kind donations of materials, equipment, or services that may be used in the program of study under subsection (1).

(5) The office of public instruction, in consultation with the department of public health and human services, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The office of public instruction may coordinate with local health districts or other organizations in seeking grants and donations for this purpose.

(6) A school district may use any of the following persons to provide instruction and training pursuant to this section:

(a) emergency care providers;
(b) fire department personnel;
(c) police officers;
(d) representatives of the American heart association;
(e) representatives of the American red cross;
(f) teachers;
(g) other school employees; and
(h) other similarly qualified persons.

History: **En. Sec. 1, Ch. 190, L. 2017; amd. Sec. 5, Ch. 220, L. 2019.**

20-7-1316. Child sex trafficking and human trafficking prevention. (1) The office of public instruction shall undertake activities to educate Montanans about and prevent child sex trafficking and human trafficking. Activities may include but are not limited to:

(a) reviewing best practices for preventing child sex trafficking and human trafficking;

(b) providing access to educational resources for interested parents, teachers, child-care providers, and other community members on how to prevent child sex trafficking and human trafficking, on the warning signs of child sex trafficking and human trafficking, and on predatory behaviors;

(c) coordinating educational and prevention efforts with law enforcement, the department of public health and human services, and local organizations that work to prevent child sex trafficking and human trafficking; and

(d) supporting school districts in developing:

(i) policies on child sex trafficking and human trafficking awareness, prevention, response, and reporting; and

(ii) educational materials and curricula aimed at preventing child sex trafficking and human trafficking.

(2) The office of public instruction shall make available cost-free, transportation industry-specific training materials that school bus drivers may use to complete a training course on how to recognize and identify signs of human trafficking and how to report concerns to an appropriate authority as part of any annual training requirement. The office of public instruction shall use transportation industry-specific courses from organizations that have developed resources specifically for school bus drivers and have made these materials available to the public at no cost.

History: **En. Sec. 1, Ch. 294, L. 2017; amd. Sec. 2, Ch. 358, L. 2025; amd. Sec. 1, Ch. 374, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 358, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 374, L. 2025. Amendment effective July 1, 2025.

20-7-1317. Electronic directory photograph repository — use in search for missing child only — annual opt-in notice required. (1) The office of public instruction shall create and maintain an electronic directory photograph repository to store directory photographs of individual students. Any directory photographs that are collected and stored pursuant to this section may be used for the sole purpose of making a current photograph available to a law enforcement authority when a student is identified as a missing child.

(2) When a student is identified as a missing child pursuant to Title 44, chapter 2, part 5, the superintendent of public instruction shall:

(a) provide the directory photograph, if there is one available in the repository, to the appropriate law enforcement authority; and

(b) include the directory photograph with the monthly list of missing Montana school children distributed pursuant to 44-2-506.

(3) Inclusion of an individual student's directory photograph in the electronic directory photograph repository is optional. The trustees of each school district shall send an annual notice to the parent or guardian of each student with:

(a) information about the electronic directory photograph repository;

(b) a form to allow the parent or guardian to choose to have the student's photograph included in the repository for that school year;

(c) information about the use of the directory photographs if a student is identified as a missing child; and

(d) information about how to request the student's directory photograph be removed from the repository.

(4) The office of public instruction shall delete from the repository any directory photograph that is 2 years old or older.

(5) The office of public instruction shall provide continuous access to the repository to designated missing persons clearinghouse staff at the department of justice. Access to the repository must include the necessary authority to upload and download photographs of students who have been reported missing.

History: En. Sec. 1, Ch. 250, L. 2019.

20-7-1318 through 20-7-1320 reserved.

20-7-1321. Employment assistance for current or former school employees, contractors, and volunteers engaged in sexual misconduct prohibited. (1) Except as provided in subsection (2), a person who is an officer, trustee, employee, agent, or contractor of a school, school district, county superintendent of schools, or the state superintendent of public instruction and who knows or has probable cause to believe that a current or former school employee, contractor, or agent has committed or has attempted, solicited, or conspired to commit an act with a child or enrolled student that constitutes a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601, 45-5-625, 45-5-702, 45-5-705, 45-5-706, or 45-5-711 may not assist that school employee, contractor, or agent in obtaining new employment apart from the routine transmission of administrative and personnel files.

(2) Subsection (1) does not apply if:

(a) the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged violation;

(b) the information has been properly reported to any other authorities as required by the laws of the United States, the state, or any political subdivision of the state, including but not limited to reporting required by Title 41, chapter 3, part 2, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., and the regulations implementing that title under Title 34, part 106, Code of Federal Regulations, or any succeeding regulations; and

(c) (i) a peace officer, city attorney, or county attorney with jurisdiction over the alleged misconduct has notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent committed or attempted, solicited, or conspired to commit an act with a child or pupil constituting a violation of the offenses listed in subsection (1);

(ii) the school employee, contractor, or agent has been charged with and acquitted or otherwise exonerated of the alleged violation; or

(iii) there have been no charges filed against the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(3) This section applies to current or former school employees, contractors, and agents of both public and nonpublic schools.

History: En. Sec. 3, Ch. 305, L. 2019; amd. Sec. 1, Ch. 167, L. 2023.

20-7-1322. Penalty. A person who purposely or knowingly assists a current or former school employee, contractor, or agent in obtaining employment in violation of 20-7-1321 is guilty of a misdemeanor and shall be fined in an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 4, Ch. 305, L. 2019.

20-7-1323. Short title. Sections 20-7-1323 through 20-7-1326 may be cited as the "Montana Pupil Online Personal Information Protection Act".

History: En. Sec. 1, Ch. 369, L. 2019.

20-7-1324. Definitions. As used in 20-7-1323 through 20-7-1326, the following definitions apply:

(1) "De-identified information" means information that cannot be used to identify an individual pupil.

(2) "K-12 online application" means an internet website, online service, cloud computing service, online application, or mobile application that is used primarily for K-12 school purposes and that was designed and is marketed for K-12 school purposes.

(3) (a) "K-12 school purposes" means activities that customarily take place at the direction of a school, teacher, or school district or aid in the administration of school activities, including but not limited to instruction in the classroom or at home, administrative activities, and collaboration between pupils, school personnel, or parents, or that are for the use and benefit of a school.

(b) The term does not include courses that are provided for the purpose of postsecondary credit or work-based learning courses provided by a work-based learning partner pursuant to 20-7-1510.

(4) "Operator" means the operator of a K-12 online application who knows or reasonably should know that the application is used primarily for K-12 school purposes.

(5) (a) "Protected information" means personally identifiable information or materials, in any media or format, that describes or otherwise identifies a pupil and that is:

(i) created or provided by a pupil, or the pupil's parent or legal guardian, to an operator in the course of the pupil's, parent's, or legal guardian's use of the operator's K-12 online application;

(ii) created or provided by an employee or agent of a school district to an operator in the course of the employee's or agent's use of the operator's K-12 online application; or

(iii) gathered by an operator through the operator's K-12 online application.

(b) The term includes but is not limited to:

(i) information in the pupil's educational record or e-mail messages;

(ii) first and last name, home address, telephone number, e-mail address, or other information that allows physical or online contact;

(iii) discipline records, test results, special education data, juvenile dependency records, grades, or evaluations;

(iv) criminal, medical, or health records;

(v) social security number;

(vi) biometric information;

(vii) disability;

(viii) socioeconomic information;

(ix) food purchases;

(x) political affiliation;

(xi) religious information; or

(xii) text messages, documents, pupil identifiers, search activity, photos, voice recordings, or geolocation information.

(6) (a) "Pupil records" means:

(i) any information directly related to a pupil that is maintained by a school district; or

(ii) any information acquired directly from a pupil through the use of instructional software or applications assigned to the pupil by a teacher or other school district employee.

(b) The term does not include de-identified information, including aggregated de-identified information used:

(i) by a third party to improve educational products for adaptive learning purposes and for customizing pupil learning;

(ii) to demonstrate the effectiveness of a third party's products in the marketing of those products; or

(iii) for the development and improvement of educational sites, services, or applications.

(7) (a) "Pupil-generated content" means materials created by a pupil, including but not limited to essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content.

(b) The term does not include pupil responses to a standardized assessment for which pupil possession and control would jeopardize the validity and reliability of that assessment.

(8) "Third party" refers to a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

History: En. Sec. 2, Ch. 369, L. 2019; amd. Sec. 1, Ch. 329, L. 2025; amd. Sec. 1, Ch. 567, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 329, L. 2025. Amendment effective May 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 567, L. 2025. Amendment effective October 1, 2025.

20-7-1325. Online protections for pupils. (1) An operator may not knowingly engage in any of the following activities with respect to the operator's K-12 online application:

(a) (i) engage in targeted advertising on the operator's K-12 online application; or

(ii) target advertising on any other site, service, or application when the targeting of the advertising is based on any information, including protected information and persistent unique identifiers, that the operator has acquired because of the use of the operator's K-12 online application;

(b) use information, including persistent unique identifiers, created or gathered by the operator's K-12 online application to amass a profile about a pupil, except in furtherance of K-12 school purposes;

(c) sell a pupil's information, including protected information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to previously acquired pupil information.

(d) disclose protected information unless the disclosure is made:

(i) in furtherance of the K-12 school purposes of the K-12 online application, provided that the recipient of the protected information disclosed pursuant to this subsection (1)(d)(i):

(A) may not further disclose the information unless done to allow or improve operability and functionality within that pupil's classroom or school; and

(B) is legally required to comply with subsection (2);

(ii) to ensure legal and regulatory compliance;

(iii) to respond to or participate in the judicial process;

(iv) to protect the safety of users or others or the security of the site; or

(v) to a service provider, provided the operator contractually:

(A) prohibits the service provider from using any protected information for any purpose other than providing the contracted service to, or on behalf of, the operator;

(B) prohibits the service provider from disclosing any protected information provided by the operator with subsequent third parties; and

(C) requires the service provider to implement and maintain reasonable security procedures and practices as provided in subsection (2).

(2) An operator shall:

(a) implement and maintain reasonable security procedures and practices appropriate to the nature of the protected information and safeguard that information from unauthorized access, destruction, use, modification, or disclosure; and

(b) delete a pupil's protected information if the school or district requests the deletion of data under the control of the school or district.

(3) Notwithstanding subsection (1)(d), an operator may disclose protected information of a pupil, as long as subsections (1)(a) through (1)(c) are not violated, under the following circumstances:

(a) if other provisions of federal or state law require the operator to disclose the information, and the operator complies with the requirements of federal and state law in protecting and disclosing that information;

(b) for legitimate research purposes:

(i) as required by state or federal law and subject to the restrictions under applicable state and federal law; or

(ii) as allowed by state or federal law and under the direction of a school, school district, office of public instruction, or board of public education, if no protected information is used for any purpose to further advertising or to amass a profile on the pupil for purposes other than K-12 school purposes; or

(c) to a state or local educational agency, including schools and school districts, for K-12 school purposes, as permitted by state or federal law.

(4) Nothing in this section prohibits:

(a) the operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application;

(b) an operator from using de-identified pupil protected information:

(i) within the operator's K-12 online application or other sites, services, or applications owned by the operator to improve educational products; or

(ii) to demonstrate the effectiveness of the operator's products or services, including in the operator's marketing;

(c) an operator from sharing aggregated de-identified pupil protected information for the development and improvement of educational sites, services, or applications; or

(d) an operator of an internet website, online service, online application, or mobile application from marketing educational products directly to parents, as long as the marketing did not result from the use of protected information obtained by the operator through the provision of services covered under this section.

(5) This section does not limit:

(a) the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to an order of a court of competent jurisdiction;

(b) the ability of an operator to use pupil data, including protected information, for adaptive learning or customized pupil learning purposes;

(c) internet service providers from providing internet connectivity to schools or pupils and their families; or

(d) the ability of pupils to download, export, or otherwise save or maintain their own pupil-created data or documents.

(6) This section does not impose a duty on:

(a) a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance of this section on those applications or software; or

(b) a provider of an interactive computer service, as defined in 47 U.S.C. 230, to review or enforce compliance with this section by third-party content providers.

(7) This section does not apply to general audience internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if the login credentials created for an operator's K-12 online application may be used to access those general audience sites, services, or applications.

(8) An operator who violates this section is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $200 or more than $500.

History: En. Sec. 3, Ch. 369, L. 2019.

20-7-1326. Pupil records — online privacy protections. (1) A school district may, pursuant to a policy adopted by its trustees, enter into a contract with a third party to:

(a) provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records; or

(b) provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the contractual provisions listed in subsection (2).

(2) A school district that enters into a contract with a third party for purposes of subsection (1) shall ensure the contract contains all of the following:

(a) a statement that pupil records continue to be the property of and under the control of the school district;

(b) notwithstanding subsection (2)(a), a description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account;

(c) a prohibition against the third party for using any information in pupil records for any purpose other than those required or specifically permitted by the contract;

(d) a description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information;

(e) a description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records. Compliance with this requirement does not, in itself, absolve the third party of liability in the event of an unauthorized disclosure of pupil records.

(f) a description of the procedures for notifying the affected parent, legal guardian, or pupil if 18 years of age or older in the event of an unauthorized disclosure of the pupil's records;

(g) a certification that pupil records will not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced. This requirement does not apply to pupil-generated content if a pupil chooses to establish or maintain an account with the third party for the purpose of storing that content pursuant to subsection (2)(b).

(h) a description of how the school district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g); and

(i) a prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

(3) In addition to any other penalties, a contract that fails to comply with the requirements of this section is void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this subdivision shall return all pupil records in their possession to the school district.

(4) If the provisions of this section are in conflict with the terms of a contract in effect before May 7, 2019, the provisions of this section do not apply to the school district or the third party subject to that agreement until the expiration, amendment, or renewal of the agreement.

(5) Nothing in this section may be construed to impose liability on a third party for content provided by any other third party.

History: En. Sec. 4, Ch. 369, L. 2019.

20-7-1327 through 20-7-1329 reserved.

20-7-1330. Graduation requirements for youth who experience disruption in education — legislative intent. (1) The legislature finds and declares pursuant to Article X, section 1, of the Montana constitution that an appropriate means of fulfilling the people's goal of developing the full educational potential of each person is to allow a pupil who experiences an educational disruption to obtain a diploma if the pupil meets the state's minimum high school credit requirement. The legislature believes educational disruptions can interfere with pupil success and intends the policy established in this section to provide additional options for a pupil to achieve the individual's maximum postsecondary potential.

(2) If an enrolled high school pupil who has experienced an educational disruption meets the minimum high school credit requirement for graduation as established by administrative rules of the board of public education but will not meet a higher credit requirement established by the trustees of the district where the student is enrolled, the trustees of the district shall award the student a diploma. The trustees may distinguish the diploma in a reasonable manner from other diplomas issued by the trustees.

(3) Pursuant to 20-5-101(3), if a pupil who receives a diploma pursuant to this section is not yet 19 years of age, the trustees may admit the individual to provide any reasonable curriculum designed to advance postsecondary success, including courses for postsecondary credit and career training.

(4) For the purposes of this section, the following definitions apply:

(a) "Board of public education" has the same meaning as provided in 20-1-101.

(b) "Educational disruption" means a disruption experienced during grades nine through twelve caused by homelessness, involvement in the child welfare system or juvenile justice system, a medical or mental health crisis, or another event considered a qualifying educational disruption by the trustees of the district.

(c) "Homelessness" has the same meaning as provided for the term "homeless children and youths" in 42 U.S.C. 11434a(2).

(d) "Pupil" has the same meaning as provided in 20-1-101.

History: **En. Sec. 1, Ch. 80, L. 2021.**

20-7-1331 through 20-7-1334 reserved.

20-7-1335. School marshal program — qualifications. (1) The board of trustees may appoint an independent contractor or a school district employee to be certified as a school marshal. The appointed employee must be a full-time employee of the district.

(2) A school marshal may be:

(a) employed full-time as a school marshal; or

(b) retained on a full-time or part-time basis and may have other assigned duties in the discretion of the board of trustees.

(3) To be eligible to serve as a school marshal, the independent contractor or school district employee must:

(a) have a permit to carry a concealed weapon pursuant to 45-8-321;

(b) meet the qualifications required for peace officers pursuant to 7-32-303; and

(c) be an active or retired peace officer as defined in 46-1-202.

(4) If an applicant for a school marshal position is an active or retired public safety officer from another state, the applicant must be certified by the Montana public safety officer standards and training council.

(5) For the purposes of 20-7-1335 through 20-7-1338, the following definitions apply:

(a) "Montana public safety officer standards and training council" means the council established in 2-15-2029.

(b) "Public school property" has the meaning provided in 20-1-220.

(c) "School marshal" means a person who is appointed by the board of trustees and employed or retained by a school district to protect the health and safety of persons and to maintain order on public school property.

History: **En. Sec. 1, Ch. 541, L. 2021.**

20-7-1336. School marshal duties and responsibilities. (1) A school marshal may act only as necessary to prevent or stop the commission of an offense that threatens serious bodily injury or death of persons on public school property.

(2) Pursuant to 45-8-361, with the consent of the trustees, a school marshal may possess, carry, and store a firearm on public school property.

(3) The trustees shall adopt a policy describing the school marshal's duties and responsibilities. The policy must:

(a) provide procedures for how a school marshal may possess, carry, and store a firearm on public school property as authorized pursuant to 45-8-361 and subsection (2) of this section;

(b) provide alternate procedures regarding the possession, carrying, and storage of a firearm by a school marshal based on the amount of time the school marshal has regular, direct contact with students;

(c) specify the types of firearms, ammunition, and other related equipment that a school marshal is authorized to possess, carry, and store on public school property; and

(d) specify requirements regarding the subject matter and frequency of additional professional development and training.

History: **En. Sec. 2, Ch. 541, L. 2021.**

20-7-1337. School marshal program — trustees' duties. (1) To implement a school marshal program, the trustees shall:

(a) ensure that a school district employee who is appointed as a school marshal satisfies the qualifications required under 20-7-1335; and

(b) adopt a written school marshal program policy as required under 20-7-1336(3).

(2) An individual's status as a school marshal ends if:

(a) the individual's license to carry a concealed weapon is suspended or revoked;

(b) the school marshal is an employee of the school district and the employee's employment with the school district ends; or

(c) the board of trustees sends written notice to the individual that the individual's services as a school marshal are no longer required.

History: En. Sec. 3, Ch. 541, L. 2021.

20-7-1338. Law enforcement notification. The trustees shall submit the school marshal's name, date of birth, and address of the school marshal's place of employment to:

(1) the Montana public safety officer standards and training council; and

(2) all applicable law enforcement agencies with jurisdiction and emergency response authority in the school district, including:

(a) the chief law enforcement officer of the local municipal law enforcement agency, if the school district is located within a municipality;

(b) the sheriff of a county where a school district is located; and

(c) in the case of a district located within the boundaries of a reservation, the chief tribal law enforcement officer and area federal law enforcement authorities.

History: En. Sec. 4, Ch. 541, L. 2021.

20-7-1339. Cardiac arrest response for youth athletes — purpose — requirements of schools and superintendent of public instruction. (1) The purposes of this section are to:

(a) support, adopt, and implement a cardiac emergency response plan in schools that integrates evidence-based core elements in accordance with the American heart association guidelines or other nationally recognized, evidence-based standards;

(b) raise awareness among parents of youth athletes about the risks related to cardiac arrest; and

(c) ensure that coaches, athletic trainers, and athletic officials understand the risks of cardiac arrest in youth athletes and that they are trained in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator.

(2) The superintendent of public instruction, after consultation with experts in cardiac arrest prevention, including health professionals, shall develop and make available on the office of public instruction's website an information sheet describing cardiac arrest symptoms and warning signs, including the risks associated with continuing to play or practice after experiencing cardiac arrest symptoms and warning signs. The superintendent of public instruction is encouraged to collaborate with the athletic association, conference, or organization with authority over interscholastic sports in the state in developing materials under this subsection (2) to ensure consistency in information provided to schools, coaches, athletic trainers, and officials.

(3) (a) Beginning in the 2026-2027 school year, in accordance with guidelines set forth by either the American heart association or other nationally recognized, evidence-based standards, each school district and nonpublic school with an athletic department or organized athletic program shall develop a standalone cardiac emergency response plan, or embed a cardiac emergency response protocol within the school safety plan or emergency operations plan, that is venue specific and addresses the appropriate use of school personnel to respond to incidents involving an individual experiencing cardiac arrest or a similar life-threatening emergency while attending or participating in a school-sponsored athletic practice or event.

(b) The plan must integrate, at a minimum, the following elements:

(i) establishing a cardiac emergency response team;

(ii) activating the team in response to a sudden cardiac arrest;

(iii) making a clearly marked automated external defibrillator easily accessible in an unlocked location at each school athletic venue and event. The automated external defibrillators must be accessible during the school day and at any school-sponsored athletic event or team practice in which pupils of the school are participating. The automated external defibrillators must be tested and maintained according to the manufacturer's operational guidelines, and notification must be provided to the appropriate first aid, ambulance, or rescue squad or other appropriate emergency medical services provider regarding the defibrillator, the type acquired, and its location.

(iv) disseminating the plan throughout the school campus;

(v) maintaining ongoing hands-on staff training in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator;

(vi) practicing annually through the use of drills;

(vii) integrating local emergency medical services with the plan; and

(viii) reviewing and evaluating the plan regularly and annually.

(4) Each school year, before a youth athletic activity season begins:

(a) a school district or nonpublic school shall inform each coach of the coach's duties under this section; and

(b) the coach of a youth athletic activity shall:

(i) obtain and maintain certification in cardiopulmonary resuscitation, first aid, and the use of an automatic external defibrillator. Certification in cardiopulmonary resuscitation and the use of an automatic external defibrillator must be consistent with nationally recognized, evidence-based emergency cardiovascular care guidelines.

(ii) hold an informational meeting for students, parents, and assistant coaches before each athletic season regarding the symptoms and warning signs of sudden cardiac arrest, which may include presentations from physicians, pediatric cardiologists, and athletic trainers as well as the information sheet provided under subsection (2).

(5) (a) If an athletic trainer, official, or coach reasonably believes a student is exhibiting symptoms or warning signs of sudden cardiac arrest, the coach may remove the student from participation in a youth athletic activity.

(b) If the student is removed from participation in the youth athletic activity, the coach shall attempt to notify the student's parent or legal guardian.

(6) A student who is removed from participation in a youth athletic activity under subsection (5) may not participate in a youth athletic activity until the student has been evaluated by and received written clearance from a licensed physician, physician assistant, or nurse practitioner.

(7) The sponsor of a recreational youth athletic activity may follow the guidelines provided under this section.

(8) As used in this section, "youth athletic activity" means:

(a) interscholastic athletics;

(b) an athletic contest or competition, other than interscholastic athletics, that is sponsored by or associated with a school district or a nonpublic school, including competitive and noncompetitive cheerleading;

(c) any sports activity sponsored by a school-affiliated club; or

(d) a practice for an activity under subsection (8)(a), (8)(b), or (8)(c), including an interscholastic practice or scrimmage.

History: **En. Sec. 1, Ch. 742, L. 2025.**

Compiler's Comments

Effective Date: Section 6, Ch. 742, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 14
Cultural Integrity Commitment Act

20-7-1401. Short title. This part may be cited as the "Cultural Integrity Commitment Act".

History: **En. Sec. 1, Ch. 442, L. 2015.**

20-7-1402. Legislative findings — purposes. (1) The legislature finds that:

(a) language in the form of spoken, written, or sign language is foundational to cultural integrity;

(b) Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers;

(c) achievement gaps persist for Indian students, including higher dropout rates;

(d) Article X, section 1, of the Montana constitution established the educational goals of:

(i) establishing an education system that develops the full educational potential of each person; and

(ii) preserving Indian cultural integrity.

(2) The purpose of this part is to promote innovative, culturally relevant, Indian language immersion programs for Indian and non-Indian students with the goal of raising student achievement, strengthening families, and preserving and perpetuating Indian language and culture throughout Indian country and Montana.

History: En. Sec. 2, Ch. 442, L. 2015.

20-7-1403. Definitions. As used in this part, the following definitions apply:

(1) "Eligible district" means a school district encompassing or adjacent to an Indian reservation or a school district that includes one or more schools with an Indian population of 10% or greater.

(2) "Immersion program" means a program of an eligible district in which:

(a) all participating students receive content area instruction in an Indian language at least 50% of the day;

(b) teachers are fully proficient in the languages they use for instruction; and

(c) the goal of the program is perpetuating cultural integrity and promoting bilingualism and biliteracy.

(3) "Indian language" means any of the languages of a federally recognized Indian tribe in Montana.

History: En. Sec. 3, Ch. 442, L. 2015; amd. Sec. 2, Ch. 240, L. 2021.

20-7-1404. Indian language immersion programs — funding — flexibility. (1) School districts are encouraged to create Indian language immersion programs and in doing so:

(a) collaborate with other school districts, the Montana digital academy, tribal governments, and tribal colleges;

(b) utilize materials produced in the Montana Indian language preservation pilot program pursuant to section 1, Chapter 410, Laws of 2013;

(c) utilize American Indian language and culture specialists as teachers of language and culture; and

(d) look to existing native language schools in Montana and around the world for guidance and best practices.

(2) In acknowledgment of Article X, section 1, of the Montana constitution, the educationally relevant factors for the school funding formula under 20-9-309(3), and the increased costs associated with language immersion programs, a district creating an Indian language immersion program is entitled to the following in addition to the school funding formula in Title 20, chapter 9:

(a) (i) subject to subsections (3) and (4), for every Indian student participating in an Indian language immersion program, an additional American Indian achievement gap payment, as calculated in 20-9-306, multiplied by 2; and

(ii) for every non-Indian student participating in an Indian language immersion program, an additional Indian education for all payment, as calculated in 20-9-306, multiplied by 2; and

(b) for every full-time American Indian language and culture specialist teaching in an Indian language immersion program, a quality educator and qualified staff payment as calculated in 20-9-306.

(3) For a district operating an Indian language immersion program that improves the district's graduation rate for American Indians by 5 percentage points or more from the previous year as measured by the office of public instruction, the multiplier in subsection (2)(a)(i) must be increased to 3.

(4) If the money appropriated for Indian language immersion programs is insufficient to provide the amounts in subsections (2) and (3), the office of public instruction shall prorate the payments accordingly.

(5) The board of public education is encouraged to approve proposed variances to standards of accreditation for Indian language immersion programs when the board finds the proposal to be educationally sound and in alignment with the purpose described in 20-7-1402(2).

(6) The cultural and intellectual property rights from materials developed for an Indian language immersion program belong to the tribe to which the materials relate. Use of the cultural and intellectual property outside of the Indian language immersion program may be negotiated with the tribe.

(7) A district may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this part.

History: **En. Sec. 4, Ch. 442, L. 2015; amd. Sec. 1, Ch. 8, L. 2017; amd. Sec. 11, Ch. 275, L. 2017; amd. Sec. 5, Ch. 482, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Part 15

Montana Advanced Opportunity Act

20-7-1501. Short title. This part may be cited as the "Montana Advanced Opportunity Act".

History: **En. Sec. 1, Ch. 279, L. 2019.**

20-7-1502. Purpose — intent. (1) The purposes of this part are to:

(a) expand personalized career and technical education opportunities for middle school and high school pupils;

(b) reduce out-of-pocket costs for pupils and families in support of a pupil's postsecondary success;

(c) empower pupils to actively engage in forming their postsecondary success path; and

(d) provide expanded flexibility to districts in supporting each pupil's postsecondary success path to align with each pupil's individual interests, passions, strengths, needs, and culture.

(2) The legislature intends to fulfill the purposes under subsection (1) by authorizing elected boards of school districts to develop initiatives using advanced opportunity aid that makes a prudent long-term investment in Montana youth by providing state funding for advanced educational opportunities and individualized pathways for career and postsecondary opportunities for pupils through career and technical education that allow pupils to accelerate and self-direct their learning.

History: **En. Sec. 2, Ch. 279, L. 2019.**

20-7-1503. Definitions. As used in this part, the following definitions apply:

(1) "Advanced opportunity" means any course, exam, or experiential, online, or other learning opportunity that is incorporated in a district's advanced opportunity plan and that is designed to advance each qualifying pupil's opportunity for postsecondary career and educational success.

(2) "Advanced opportunity aid" means, for each fiscal year, the following percentages of a district's total quality educator and qualified staff payment under 20-9-306 in the prior year after subtracting any adjustments to the district's total quality educator and qualified staff payment made under 20-9-324 and 20-9-383:

(a) for an elementary district, 4.5%;

(b) for a high school district, 30%; and

(c) for a K-12 district, 18%.

(3) "Advanced opportunity facilitator" means an individual employed by a school district who coordinates between the school district, a qualifying pupil and the pupil's family, postsecondary institutions, employers, industry associations, community organizations, or any other individual or entity that provides an advanced opportunity.

(4) "Advanced opportunity plan" means a plan adopted by a board of trustees of a district that provides advanced opportunities for the pupils of the district.

(5) "District" means a school district as defined in 20-6-101.

(6) "Qualifying pupil" means a pupil, as defined in 20-1-101, that is enrolled and admitted by a district qualified for advanced opportunity aid under 20-7-1506(3) who is in grades 6 through 12.

History: **En. Sec. 3, Ch. 279, L. 2019; amd. Sec. 1, Ch. 574, L. 2023; amd. Sec. 6, Ch. 482, L. 2025; amd. Sec. 1, Ch. 594, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 6, Ch. 482, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 594, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-7-1504 and 20-7-1505 reserved.

20-7-1506. Incentives for creation of advanced opportunity programs. (1) A district that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (3) is eligible for the funding and flexibilities in subsections (4) and (5).

(2) (a) To qualify for the funding and flexibilities in subsections (4) and (5), the board of trustees of a district shall submit an application that has been approved by motion of the board and signed by the presiding officer to the board of public education for approval of an advanced opportunity program on a form provided by the superintendent of public instruction.

(b) The school board's application must include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:

(i) develop an advanced opportunity plan for each participating pupil from grades 6 through 12 that fosters individualized pathways for career and postsecondary educational opportunities and that honors individual interests, passions, strengths, needs, and culture and is supported through relationships among teachers, family, peers, the business community, postsecondary education officials, and other community stakeholders;

(ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections; and

(iii) ensure equality of educational opportunity to participate by all qualifying pupils of the district.

(3) The board of public education shall:

(a) establish the opening and closing dates for receipt of applications and annual reports;

(b) no later than January 31, qualify for the subsequent school year nonparticipating districts that submit an application meeting the requirements of subsection (2) for the funding in subsection (4) and the flexibilities in subsection (5);

(c) no later than January 31, requalify for the subsequent school year participating districts that submit an annual report demonstrating continued qualification for funding under this section and including a report of progress toward measurable objectives under the district's advanced opportunity plan and any updates to the plan; and

(d) on or before September 15 of even-numbered years, report to the education interim committee pursuant to 5-11-210 on the progress made by districts operating under approved advanced opportunity plans. The report must address, at a minimum:

(i) the number of pupils benefiting from advanced opportunity aid;

(ii) the number and type of credits and certifications or credentials earned by pupils that have been paid for by the program;

(iii) projected growth in the program and funding needs for the next biennium; and

(iv) any issues with the program reported by pupils, parents, districts, postsecondary institutions, or examination administrators and how these issues are being addressed and whether the issues require legislative action.

(4) The superintendent of public instruction shall provide advanced opportunity aid to each district qualified by the board of public education under subsection (3) by October 1. The aid under this section must be distributed directly to the school district's flexibility fund under 20-9-543.

(5) Advanced opportunity aid may be expended on any qualifying pupil by the district subject to the following conditions:

(a) at least 75% of a district's annual distribution of advanced opportunity aid must be spent or encumbered to address out-of-pocket costs that would otherwise, in the absence of such expenditure, be assumed by a qualifying pupil or the pupil's family as a result of participation in an advanced opportunity. The trustees have full discretion to allocate expenditures among all pupils of the district or any select group of pupils, using any reasonable method they consider appropriate in their full discretion to meet the individual needs of each pupil who pursues an advanced opportunity. The trustees may create free district initiatives of their own that satisfy the conditions of this subsection (5)(a). Permissible expenditures include but are not limited to:

(i) dual credit tuition at any institution under authority of the board of regents;

(ii) exam fees used for postsecondary advancement, placement, or credit, including but not limited to exam fees associated with the ACT, SAT, CLEP, career advancement, international baccalaureate, and advanced placement;

(iii) fees charged by and any out-of-pocket costs of any business providing work-based learning opportunities to a qualifying pupil of the district, including the cost of workers' compensation insurance for work-based learning opportunities;

(iv) exam and other fees of any industry-recognized credential or license for which a qualifying pupil is eligible as a result of participation in an advanced opportunity;

(v) the costs of participation for qualifying pupils in out-of-school enrichment activities that, in the discretion of the trustees, advance the pupil's opportunity for postsecondary career and educational success; and

(vi) the costs of participation for qualifying pupils that are identified as necessary, in the discretion of the district and upon request of a qualifying pupil, to maximize the benefit of an advanced opportunity for a qualifying pupil;

(b) advanced opportunity aid remaining that is not expended or carried forward for the purposes of subsection (5)(a) may be spent by the district to:

(i) provide any K-12 career and vocational/technical education course offered by the district; or

(ii) pay for the costs of employing an advanced opportunity facilitator as defined in 20-7-1503.

(6) A district qualified for funding under subsection (3) may supplement state funding of advanced opportunity aid with matched expenditures from its adopted adult education budget, not to exceed 25% of the district's advanced opportunity aid. The conditions under subsection (5) apply to any matched expenditures funded under this subsection (6).

(7) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include advanced opportunity aid in an amount estimated to be sufficient to provide advanced opportunity aid to all districts of the state based on prior demand. Any shortfalls must be addressed in the same manner as funding of deficiencies in BASE aid under 20-9-351.

History: **En. Sec. 4, Ch. 279, L. 2019; amd. Sec. 2, Ch. 574, L. 2023; amd. Sec. 7, Ch. 482, L. 2025; amd. Sec. 2, Ch. 594, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 7, Ch. 482, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 594, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-7-1507 through 20-7-1509 reserved.

20-7-1510. Credit for participating in work-based learning partnerships. (1) Work-based learning must provide all participating students with on-the-job experience and training along with career and complimentary vocational/technical classroom instruction to contribute to each pupil's employability. The students' classroom activities and on-the-job experiences must be planned and supervised by the school and the employer to ensure that both activities contribute to the student's employability. Pupils enrolled in a work-based learning program must receive credit for related classroom instruction and on-the-job training. In the absence of a proficiency model, the time requirement for students in work-based learning must be converted and is equivalent to the time requirement for credit to be earned.

(2) Any individual licensed with a class 1 through 4 license is authorized to facilitate interfaces between the school and work-based learning partners. Work-based learning partnerships may be provided for any trade, including but not limited to trades identified by the superintendent of public instruction related to the class 4 license established under section 20-4-106.

History: **En. Sec. 8, Ch. 247, L. 2021.**

Cross-References

Work-based learning programs — requirements of agreements, 20-7-307.

Part 16
Transformational Learning

20-7-1601. Forms of personalized learning — legislative intent. (1) The legislature finds and declares pursuant to Article X, section 1, of the 1972 Montana constitution that forms of personalized learning authorized under Montana law, including but not limited to work-based learning pursuant to 20-7-1510, proficiency-based learning as defined in subsection (2) of this section, determinations of course equivalency by an elected board of trustees under 20-3-324(18), remote instruction under 20-7-118, and transformational learning, are appropriate means of fulfilling the people's goal of developing the full educational potential of each person. The provision of and participation in forms of personalized learning under this part and in compliance with accreditation standards of the board of public education are constitutionally compliant and protected. The legislature declares that any public or private regulation that discriminates against a district or pupil participating in forms of personalized learning referenced in this section is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution.

(2) As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Proficiency" means a measure of competence that is demonstrated through application in a performance assessment.

(b) "Proficiency-based learning" means an education system in which student progress is based on a student's demonstration of competence rather than on the basis of seat time or the age or grade level of the student.

(c) "Transformational learning" means a flexible system of pupil-centered and proficiency-based learning that is designed to develop the full educational potential of each pupil that:

(i) is customized to address each pupil's strengths, needs, and interests; and

(ii) actively engages each pupil in determining what, how, when, and where each pupil learns.

History: En. Sec. 1, Ch. 402, L. 2019; amd. Sec. 9, Ch. 247, L. 2021; amd. Sec. 1, Ch. 307, L. 2023; amd. Sec. 4, Ch. 580, L. 2023; amd. Sec. 1, Ch. 462, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 462, L. 2025. Amendment effective July 1, 2025.

20-7-1602. *(Temporary)* **Incentives for creation of transformational learning programs.** (1) (a) A school district as defined in 20-6-101 that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (4) is eligible for a 4-consecutive-year provision of the transitional funding and flexibilities in subsections (5) and (6).

(b) A school district may be qualified by the board of public education for no more than one 4-consecutive-year provision of transitional funding and flexibilities in any 8-year period.

(2) To qualify for the transitional funding and flexibilities in subsections (5) and (6), the board of trustees of a district shall submit an application that has been approved by motion of the board of trustees and signed by the presiding officer to the board of public education for approval of a transformational learning program on a form provided by the superintendent of public instruction. The school board's application must:

(a) identify the number of full-time equivalent educators meeting the criteria of 20-9-327(3) who will participate in the district's transformational learning program, with full-time equivalence calculated and reported by the district based on the planned portion of each qualifying educator's full-time equivalent assignment that is dedicated to the district's transformational learning program;

(b) include the district's definition of proficiency within the meaning of the term as used in 20-9-311(4)(d). The definition must be incorporated in the district's policies and must be used for purposes of determining content and course proficiency and other progress, promotion from grade to grade, grades, and graduation for pupils enrolled in the district's transformational learning program. The district must also describe the district's plans for the implementation of proficiency-based learning as defined in 20-7-1601; and

(c) include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:

(i) develop a transformational learning plan for each participating pupil that honors individual interests, passions, strengths, needs, and culture and that is rooted in relationships with teachers, family, peers, and community members;

(ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections;

(iii) provide effective professional development to assist employees in transitioning to a transformational learning model; and

(iv) ensure equality of educational opportunity to participate by all pupils of the district.

(3) The board of public education shall establish by rule the opening and closing dates for receipt of applications and annual reports.

(4) The board of public education shall:

(a) on an annual basis, qualify districts that submit an application meeting, in the determination of the board or the board's designee, the requirements of subsection (2) for the funding in subsection (5) and the flexibilities in subsection (6) until the annual appropriation is exhausted, after which further applications, including first-time applications and annual reports requesting an expansion of a previously approved plan, are to be deferred for consideration in a subsequent year, in the order of a lottery system draw, if and when additional funds become available for distribution. The lottery system shall assign every first-time application or request for expansion of a previously approved plan a number that will be placed into a lottery system draw that will be done by a third party. The applications will be assigned a position in the order in which the numbers are drawn. The drawing will continue until all districts are on the qualification list for the current year funding or deferred for consideration in a subsequent year.

(b) require each participating school district to submit an annual report demonstrating, in the determination of the board or the board's designee, continued qualification for funding under this section and including a report of progress toward measurable objectives under the school district's transformational learning plan. The school district shall include any decrease or requested increase in the number of participating full-time equivalent educators under subsection (2)(a) for adjustments to its funding. Any increase in funding based on requested increased levels of participation under subsection (2)(a) must be determined in the year in which the request for a funding increase is received and augmented with a lottery system among all first-time applications and annual reports requesting an expansion of a previously approved plan and must be contingent on the availability of funds within any appropriation of the legislature. An application deferred for consideration in a subsequent year due to lack of funding must be annually updated each year after more than 1 full fiscal year has passed from the date of original submission of the application in order for the application to retain its priority by original date received.

(c) report in accordance with 5-11-210 to the education interim committee on the progress made by districts as submitted in the annual report and strategic plan operating under approved and funded transformational learning plans.

(5) (a) For a period of 4 consecutive fiscal years following the fiscal year in which a district is qualified by the board of public education and contingent on satisfying the annual reporting requirements under subsection (4), the superintendent of public instruction shall provide a transformational learning aid payment to the district equivalent to 50% of the quality educator and qualified staff payment defined in 20-9-306 from the immediate prior fiscal year multiplied by the number of the district's full-time equivalent educators reported under subsection (2)(a) of this section.

(b) The payment under this subsection (5) must be distributed directly to the school district's flexibility fund established under 20-9-543 by October 1 of each year of funding by the superintendent of public instruction. The money must be expended by the district only for the purposes set forth in the district's approved transformational learning program and within 6 years of the first year of funding.

(c) A school district may not receive more than 25% of the total amount of payments made under this subsection (5).

(6) During each year that a school district remains qualified for funding under subsection (5), the district's trustees may:

(a) if the obligations of transparency set forth in 20-9-116 are met, levy an annual permissive property tax not to exceed 100% of any funds distributed to the district under subsection (5). Proceeds of the levy must be deposited in the district's flexibility fund established under 20-9-543 and must be expended by the district only for the purposes of the district's approved transformational learning plan.

(b) transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to the district's flexibility fund.

(7) (a) Any funds transferred pursuant to subsection (6)(b) may be expended by the district solely for the purposes of implementing the district's approved transformational learning plan. Any transfers of funds are not considered expenditures to be applied against budget authority.

(b) Any transfers that are not expended for the purposes of implementing the district's approved transformational learning plan within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(c) The intent of subsection (6)(b) and this subsection (7) is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(8) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include transformational learning aid as defined in subsection (9).

(9) For the purposes of this title, the following definitions apply:

(a) "Transformational learning" means a flexible system of pupil-centered and proficiency-based learning that is designed to develop the full educational potential of each pupil that:

(i) is customized to address each pupil's strengths, needs, and interests; and

(ii) actively engages each pupil in determining what, how, when, and where each pupil learns.

(b) "Transformational learning aid" means 50% of the quality educator and qualified staff payment defined in 20-9-306 multiplied by 10% of the statewide number of full-time equivalent educators from the fiscal year immediately preceding the year to which distribution of transformational aid applies calculated as provided in 20-9-327. *(Terminates June 30, 2026—sec. 4, Ch. 462, L. 2025.)*

History: En. Sec. 2, Ch. 402, L. 2019; amd. Sec. 1, Ch. 203, L. 2021; amd. Sec. 52, Ch. 261, L. 2021; amd. Sec. 2, Ch. 307, L. 2023; amd. Sec. 2, Ch. 462, L. 2025; amd. Sec. 8, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 462, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Termination Provision Amended: Section 4, Ch. 462, L. 2025, amended sec. 7, Ch. 402, L. 2019, by shortening the termination of this section to June 30, 2026. Effective July 1, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-7-1603 and 20-7-1604 reserved.

20-7-1605. *(Temporary)* **Transformational learning — phase II grant program.** (1) There is a transformational learning phase II grant program administered by the superintendent of public instruction. The purposes of the grant program are to:

(a) further develop the efforts of the most innovative transformational learning grantees toward district-wide implementation of transformational and proficiency-based learning; and

(b) use the knowledge gained by phase II grantees to develop recommendations and guidance for other districts interested in innovating in a similar manner.

(2) The superintendent of public instruction shall:

(a) invite those school districts that are awarded transformational learning grants to submit an application for a transformational learning phase II grant. The application must include at a minimum:

(i) evidence of the progress made by the district in implementing transformational and proficiency-based learning as the terms are defined in 20-7-1601; and

(ii) a detailed description of how the district plans to continue its progress toward district-wide transformational and proficiency-based learning, including cost estimates;

(b) no later than February 1, 2026, determine a list of no more than five districts to recommend for a phase II grant to the board of public education for the board's approval; and

(c) no later than July 15, 2026, and contingent on appropriation from the legislature, distribute to no more than five districts a transformational learning phase II grant. The superintendent shall base the award amounts on the district's size and the costs outlined in its application and utilize 90% of the amount appropriated by the legislature for the grants.

(3) A district receiving a transformational learning phase II grant shall:

(a) deposit the money in the district's flexibility fund and use the money prior to June 30, 2028, for the purposes described in the district's grant application; and

(b) participate in collaborative activities organized by the superintendent of public instruction for grantees as described in subsection (4).

(4) (a) With the remaining 10% of the amount appropriated by the legislature, the superintendent shall provide technical assistance and collaborative opportunities for the grantees. In supporting grantees, the superintendent may:

(i) host convenings of the grantees;

(ii) provide professional development for grantees;

(iii) enlist the assistance of organizations with expertise in supporting school districts in implementing transformational and proficiency-based learning; and

(iv) provide other types of support requested by grantees or determined to be beneficial by the superintendent.

(b) No later than September 1, 2028, the office of public instruction and the phase II grantees shall provide a joint report to the education interim committee and the education interim budget committee[, in accordance with 5-11-210,] on the progress made by the grantees. The report must include:

(i) a detailed description of how the grantees furthered their progress toward district-wide transformational and proficiency-based learning as a result of the grant;

(ii) a guidance document for other school districts in implementing transformational and proficiency-based learning; and

(iii) recommendations for legislative action to support districts in implementing transformational and proficiency-based learning. *(Terminates December 31, 2028—sec. 8, Ch. 462, L. 2025.)*

History: **En. Sec. 3, Ch. 462, L. 2025.**

Compiler's Comments

Effective Date: Section 7, Ch. 462, L. 2025, provided: "[This act] is effective July 1, 2025."

Termination: Section 8, Ch. 462, L. 2025, provided that this section terminates December 31, 2028.

2025 Code Commissioner Correction: In (4)(b) the Code Commissioner inserted "in accordance with 5-11-210" to reflect the decision to include the report in 5-11-222.

Part 17
Students With Special Needs Equal Opportunity Act

20-7-1701. Short title. This part may be cited as the "Students With Special Needs Equal Opportunity Act".

History: **En. Sec. 1, Ch. 616, L. 2023.**

20-7-1702. Montana special needs equal opportunity education savings account program — findings and purposes. (1) There is a Montana special needs equal opportunity education savings account program provided by the legislature as a desirable educational program pursuant to Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of the people to have an overall system of education that offers equal opportunity for all to reach their full educational potential.

(2) The legislature finds that expanding special needs educational opportunities within the state is a valid public purpose to ensure equal educational opportunity for all children with special needs.

(3) The purposes of this part pursuant to Article X, section 1(1), of the Montana constitution are to ensure that Montana children have access to educational opportunities that will develop each child's full educational potential.

History: En. Sec. 2, Ch. 616, L. 2023.

20-7-1703. Definitions. As used in this part, the following definitions apply:

(1) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana.

(2) "ESA student amount" means the sum of:

(a) the data-for-achievement payment rate under 20-9-306;

(b) the Indian education for all payment rate under 20-9-306;

(c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and

(d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under the program.

(3) "Montana special needs equal opportunity education savings account" or "account" means an account within the trust established in 20-7-1710 in which a payment under 20-7-1709 is deposited on behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational resources pursuant to 20-7-1704 for qualified students.

(4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of a qualified student, and whose parental rights have not been terminated.

(5) "Program" means the Montana special needs equal opportunity education savings account program established in 20-7-1702.

(6) "Qualified school" means a nonpublic school serving any combination of grades kindergarten through 12 that:

(a) is in compliance with applicable local health and safety regulations;

(b) holds a valid occupancy permit, if required by the municipality;

(c) does not discriminate on the basis of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds, pursuant to 49-2-307;

(d) requires that any employee who may have unsupervised access to children be subject to a criminal history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c); and

(e) meets the requirements for Montana nonpublic schools under 20-5-109.

(7) "Qualified student" means a resident of the state who:

(a) in the current school year:

(i) is identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(ii) is between the ages of 5 and 19 on September 10;

(b) is not currently enrolled in a school operating for the purpose of providing educational services to youth in department of corrections commitment programs or in the Montana school for the deaf and blind; and

(c) (i) was counted during the previous school year for purposes of school district ANB funding;

(ii) was enrolled during the previous school year in a program listed in subsection (7)(b);

(iii) did not reside in the state in the previous school year; or

(iv) is eligible to enter a kindergarten program pursuant to 20-7-117.

(8) "Resident school district" means the school district in which a student resides.

History: En. Sec. 3, Ch. 616, L. 2023.

20-7-1704. Use of Montana special needs equal opportunity education savings account — allowable educational resources. (1) The superintendent of public instruction shall allow money deposited in the Montana special needs equal opportunity education savings account to be used to reimburse parents for the purchase of the following educational resources only for the benefit of the individual for whom the account was created:

(a) qualified school tuition, fees, textbooks, software, or other instructional materials or services;

(b) an educational program or course using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs;

(c) curriculum, including supplemental materials necessary for the curriculum;

(d) tutoring;

(e) educational therapies or services, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies from licensed or certified practitioners or providers, including licensed or certified paraprofessionals or educational aides;

(f) state or nationally recognized assessment tests, advanced placement exams, entrance examinations at an eligible postsecondary institution, or other assessment instruments;

(g) services provided by a public school in the state, including individual classes and extracurricular activities;

(h) eligible postsecondary institution tuition, books, online courses, or other fees;

(i) no more than $50 annually in consumable education supplies, such as paper, pens, and markers;

(j) transportation required for another allowable educational service;

(k) fees paid to a cooperative educational program; and

(l) any other educational expense approved by the superintendent of public instruction.

(2) Account funds may not be refunded, rebated, or shared with a parent or participating student in any manner.

(3) A parent may pay for educational services or costs not covered by account funds.

(4) Nothing in this part may be construed to require that a qualified student must be enrolled, full-time or part-time, in either a private school or nonpublic online school.

History: En. Sec. 4, Ch. 616, L. 2023.

20-7-1705. Parent responsibilities. (1) In order for a qualified student to participate in the Montana special needs equal opportunity education savings account program during the time periods designated by the superintendent of public instruction pursuant to 20-7-1706, the superintendent of public instruction shall require parents of qualified students who wish to participate in the program to notify the superintendent of public instruction and sign a contract with the superintendent of public instruction to do the following:

(a) utilize account funds to procure allowable educational resources under 20-7-1704 to develop the qualified student's full educational potential;

(b) release the resident school district from all obligations to educate the qualified student, including any requirements that the district provide a free and appropriate education to the qualified student or develop an individualized education program for the qualified student;

(c) submit to the superintendent of public instruction copies of receipts for allowable educational resources for reimbursement;

(d) if the qualified student is re-enrolled in a public school, immediately notify the superintendent of public instruction; and

(e) if the qualified student enrolls at a qualified school, ensure that the qualified student:

(i) remains in attendance unless excused by the qualified school for illness or other good cause; and

(ii) complies with the qualified school's published policies.

(2) If a qualified student re-enrolls full-time in a public school district, the superintendent of public instruction shall terminate payments for the student to the Montana special needs equal opportunity education savings account.

History: En. Sec. 5, Ch. 616, L. 2023.

20-7-1706. Responsibilities of superintendent of public instruction — rulemaking. (1) The superintendent of public instruction shall make information about the program accessible through printed informational materials and the office of public instruction website to parents, students, and school districts.

(2) The superintendent of public instruction shall ensure that parents of qualified students receive notice that participation in the program is a parental placement under the Individuals With Disabilities Education Act, 20 U.S.C. 1412, along with an explanation of the rights that parentally placed students possess under the Individuals With Disabilities Education Act and any applicable state laws and regulations.

(3) The superintendent of public instruction may remove a qualified student from eligibility for an account if the parent fails to comply with the terms of the contract signed pursuant to 20-7-1705, knowingly misuses account funds, or knowingly fails to comply with the terms of the contract with intent to defraud. If a qualified student is removed from eligibility, the superintendent of public instruction shall suspend the qualified student from the program and shall notify the parent in writing that the qualified student has been suspended and that no further reimbursements from the account will be allowed. The notification must specify the reason for the suspension and state that the parent has 10 business days to respond and take corrective action. If the parent refuses or fails within the 10-day period to contact the superintendent of public instruction or provide information or make a report that is required for reinstatement, the superintendent of public instruction may remove the qualified student from the program pursuant to this subsection. A parent may appeal the superintendent of public instruction's decision pursuant to Title 2, chapter 4, part 6.

(4) The superintendent of public instruction may refer cases of substantial misuse of account funds to the attorney general for investigation if the superintendent of public instruction obtains evidence of fraudulent use of an account.

(5) The superintendent of public instruction shall establish rules necessary for administering the program that are limited to the following:

(a) establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of public instruction of the parent's desire for the student to participate in the program. Each time period must be at least 1 month long. One period must be between September 1 and January 1, and the other time period must be between March 1 and June 1, based on the superintendent of public instruction's determination of school district and parent needs.

(b) verification of student eligibility pursuant to 20-7-1703;

(c) creation of a parent contract pursuant to 20-7-1705;

(d) notification of the resident school district of the student's participation in the program;

(e) calculation of the amount of the ESA student amount;

(f) accounting guidance related to the money remitted by school districts under 20-7-1709(2);

(g) establishment of participation agreements to create a trust interest in the special needs equal opportunity education savings trust established in 20-7-1710 and provision for participation in the program; and

(h) procedures for reimbursement for the purchase of allowable educational resources from a student's account.

History: En. Sec. 6, Ch. 616, L. 2023.

20-7-1707. Responsibilities of public school districts — student records. A public school or school district that previously enrolled a qualified student participating in the Montana special needs equal opportunity education savings account program shall provide a qualified school that has enrolled a participating student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

History: En. Sec. 7, Ch. 616, L. 2023.

20-7-1708. Qualified schools — regulations. (1) The superintendent of public instruction shall require qualified schools who enroll students who are participating in the Montana special needs equal opportunity education savings account program to submit quarterly reports of services provided to qualified students as required under the program.

(2) A qualified school is not an agent of the state or federal government.

(3) The superintendent of public instruction or any other state agency may not regulate the educational program of a qualified school that enrolls a qualified student, except as provided under 20-5-109.

(4) The creation of the Montana special needs equal opportunity education savings account program does not expand the regulatory authority of the state, its officers, or a school district to impose additional regulation on providers of educational services under the program beyond that reasonably necessary to enforce the requirements of the Montana special needs equal opportunity education savings account program.

History: **En. Sec. 8, Ch. 616, L. 2023.**

20-7-1709. Montana special needs equal opportunity education savings account — funding and administration. (1) Following receipt of a signed contract pursuant to 20-7-1705, the superintendent of public instruction shall notify the resident school district of the qualifying student's participation in the program and the amount calculated by dividing the student's ESA student amount by 10.

(2) (a) Beginning with the next distribution of BASE aid payments pursuant to 20-9-344 for the months of August through May, the resident school district shall remit to the office of public instruction the amount calculated in subsection (1) for each participating student by no later than the 10th of the month following the BASE aid distribution.

(b) A school district may elect to have the office of public instruction provide the amount calculated under subsection (1) in the first year of a student's participation in the program in the school district. In this circumstance:

(i) the office of public instruction shall use money from the BASE aid appropriation and account for the money as provided in subsection (4); and

(ii) in the first year in which the student is no longer participating in the program in the school district, the office of public instruction shall reduce the school district's BASE aid payment by an amount equivalent to the amount provided by the office of public instruction under this subsection (2)(b), increased by the same inflationary adjustment provided by the legislature for the basic and per-ANB entitlement amounts calculated as provided in 20-9-306 since the student's first year of participation in the program in the school district.

(3) The money remitted under subsection (2):

(a) must be from the district's general fund;

(b) may not include revenue from the guarantee account described in 20-9-622; and

(c) must be accounted for under rules adopted by the superintendent of public instruction.

(4) The superintendent of public instruction shall account for the money remitted under subsection (2) as follows:

(a) 95% of the money must be deposited in accounts within the special needs equal opportunity education savings trust established in 20-7-1710 to be used only for reimbursing parents for the purchase of allowable educational resources pursuant to 20-7-1704; and

(b) 5% of the money must be deposited in the office of public instruction special needs equal opportunity ESA administration account established in subsection (7).

(5) The office of public instruction shall ensure that the participating student is included in the resident school district's ANB calculation pursuant to 20-9-311 in any year that the student remains otherwise eligible for inclusion and participates in the program. No other school district may count the student for ANB purposes. The participating student is not considered to be enrolled in the resident school district.

(6) The office of public instruction shall administer the individual student accounts pursuant to subsection (4)(a) so that:

(a) reimbursements are made promptly to parents for the purchase of allowable educational resources for a participating student pursuant to 20-7-1704; and

(b) on a student's 24th birthday, the student's account is closed and any remaining funds in the student's account are returned to the guarantee account described in 20-9-622.

(7) (a) There is an office of public instruction special needs equal opportunity ESA administration account within the state special revenue fund created in 17-2-102 consisting of 5% of the money remitted to the office of public instruction pursuant to subsection (2).

(b) Funds in the office of public instruction special needs equal opportunity ESA administration account are statutorily appropriated, as provided in 17-7-502, to the office of public instruction and must be used for the costs of administering the program.

History: **En. Sec. 9, Ch. 616, L. 2023; amd. Sec. 1, Ch. 408, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 408, L. 2025. Amendment effective July 1, 2025.

20-7-1710. Special needs equal opportunity education savings trust. There is a special needs equal opportunity education savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. Each participating trust account represents a trust interest in the trust and includes interest and investment income earned by the trust account.

History: **En. Sec. 10, Ch. 616, L. 2023.**

Part 18
Early Literacy Targeted Interventions

20-7-1801. Findings — purpose — legislative intent. (1) The legislature finds that the ability to read and to perform math at or above grade level is essential for educational success. The legislature also finds that too many Montana children are not proficient in reading or math at the end of 3rd grade.

(2) The purposes of this part are to:

(a) provide parents with voluntary early interventions for their children;

(b) increase the number of children who are proficient in reading and math at the end of 3rd grade and in so doing help those children develop their full educational potential pursuant to Article X, section 1(1), of the Montana constitution; and

(c) foster a strong economic return for the state on early educational investment through enhancing Montana's skilled workforce and decreasing future reliance on social programs and the criminal justice system.

(3) The legislature intends that the board of public education, the office of public instruction, and the boards of trustees of school districts collaborate to implement this part and achieve the purposes under subsection (2).

(4) The legislature further intends that the board of public education, the office of public instruction, and the boards of trustees of school districts collaborate on an ongoing basis to gather, analyze, and make available outcome data and continually refine the interventions to increase the efficacy and efficiency of each intervention.

History: **En. Sec. 1, Ch. 608, L. 2023; amd. Sec. 4, Ch. 439, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 439, L. 2025. Amendment effective May 5, 2025.

20-7-1802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Early targeted intervention" or "intervention" means, as further described in 20-7-1803, any of the following:

(a) a classroom-based program;

(b) a home-based program; or

(c) a jumpstart program.

(2) "Eligible child" means a child who is determined through the evaluation methodology selected by the board of public education pursuant to 20-7-1803 to be below a trajectory leading to reading or math proficiency at the end of 3rd grade.

(3) "Evaluation methodology" means a research-based methodology, instrument, or assessment selected by the board of public education to determine, based on a child's age or grade level, whether the child is above, at, or below a developmental trajectory leading to reading or math proficiency on completion of 3rd grade.

(4) "Trustees" means the board of trustees of an elementary or K-12 school district.

History: **En. Sec. 2, Ch. 608, L. 2023; amd. Sec. 5, Ch. 439, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 439, L. 2025. Amendment effective May 5, 2025.

20-7-1803. Early targeted interventions. (1) The trustees of a school district may provide eligible children with any of the interventions described in this section. This part may not be construed to limit the duty or authority of trustees to provide educational opportunities described elsewhere in this title.

(2) The board of public education shall determine evaluation methodologies to determine, based on a child's age or grade level, whether the child is above, at, or below a developmental trajectory leading to reading or math proficiency on completion of 3rd grade. The evaluation methodologies must be:

(a) developmentally appropriate;

(b) research-based;

(c) cost-effective; and

(d) if possible, aligned with formative assessments that inform instruction in the classroom-based program and the jumpstart program.

(3) The superintendent of public instruction shall provide school districts with access to and technical support for the evaluation methodologies determined by the board of public education.

(4) A child may not be evaluated for the purposes of this part unless requested by the child's parent or guardian. The trustees may administer an evaluation methodology to a child who will be 4 years of age or older on or before the following September 10 and who has not yet entered 3rd grade. A child who is evaluated to be below trajectory for 3rd-grade reading or math proficiency for the child's age or grade level is an eligible child.

(5) (a) For an eligible child who is 4 years of age or older on or before September 10 of the year in which the child is to participate in the program and who is not entering and who has not completed kindergarten, the trustees may offer a classroom-based program, which may be a half-time or full-time program. A full-time program must allow a parent or guardian to enroll the child half-time.

(b) The classroom-based program must align with developmentally appropriate early education learning standards as determined by the board of public education. The standards must include a requirement for ongoing evaluation of student progress used to tailor instruction to specific student needs.

(6) (a) For an eligible child who is 4 years of age or older on or before September 10 of the year in which the child is to participate in the program and who has not yet completed 2nd grade, the trustees may offer a home-based program.

(b) The home-based program must be selected by the board of public education and must:

(i) be operated by a nonprofit entity;

(ii) be research-based and proven effective at developing early literacy or numeracy skills in populations at risk of not being proficient in reading or math at the end of 3rd grade;

(iii) foster parental engagement; and

(iv) have a cost of no more than $1,000 a year for each child.

(c) The superintendent of public instruction shall provide school districts with access to and technical support for the home-based program.

(7) (a) For an eligible child who is 5 years of age or older on or before September 10 of the year in which the child is to participate in the program and who has not yet completed 3rd grade, the trustees may offer a jumpstart program.

(b) The jumpstart program must:

(i) take place during the time between the end of one school calendar year and the start of the next school calendar year, as determined by the trustees, preceding a child's entry into kindergarten, 1st grade, 2nd grade, or 3rd grade;

(ii) be at least 4 weeks in duration and provide at least 120 instructional hours;

(iii) be aligned to a framework determined by the board of public education; and

(iv) be designed in a manner to increase the likelihood of a child being evaluated at the end of the ensuing school year to be at or above a trajectory leading to reading or math proficiency at the end of 3rd grade.

History: En. Sec. 3, Ch. 608, L. 2023; amd. Sec. 6, Ch. 439, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 439, L. 2025. Amendment effective May 5, 2025.

Transition: Section 9, Ch. 439, L. 2025, provided: "A school district may administer a numeracy-based evaluation methodology as soon as the methodology is determined by the board of public education pursuant to 20-7-1803, and a district may incorporate numeracy in jumpstart programs starting on or after [the effective date of this act]." Effective May 5, 2025.

20-7-1804. Early targeted interventions — funding — reporting. (1) An eligible child participating in a classroom-based program pursuant to 20-7-1803(5) must be included in enrollment counts for the purpose of ANB calculations in the manner described in 20-9-311.

(2) The superintendent of public instruction shall pay for the costs for an eligible child participating in a home-based program pursuant to 20-7-1803(6) from funds appropriated for this purpose. The cost for each child may not exceed $1,000 a year. If the annual appropriation for this program is not sufficient to fully fund all eligible children participating in the home-based program, the superintendent shall limit participation on a first-come, first-served basis.

(3) An eligible child participating in a jumpstart program pursuant to 20-7-1803(7) must be counted as quarter-time enrollment by the school district providing the jumpstart program to the child for the purpose of ANB calculations pursuant to 20-9-311. An eligible child participating in a jumpstart program provided by a district other than the child's resident school district does not require an out-of-district attendance agreement and is not subject to the tuition laws under 20-5-320 through 20-5-324.

(4) Trustees offering an early targeted intervention shall closely monitor the program and report annually to the superintendent of public instruction on the efficacy of the program no later than July 15. The superintendent shall collaborate with trustees in maximizing the efficiency of fulfilling this reporting requirement. The report must include anonymized information on student progress, including the student's performance on:

(a) the evaluation methodology that led to eligibility for the program;

(b) any formative assessments administered;

(c) if administered, the evaluation methodology at the end of the school year in which intervention was provided; and

(d) any statewide reading and math assessments administered in grades 4 through 6.

(5) Pursuant to 20-7-104, the superintendent of public instruction shall monitor early targeted interventions and gather data to evaluate the efficacy of the interventions while protecting the privacy rights of students and families. The superintendent shall report, in accordance with 5-11-210, to the education interim committee and the education interim budget committee no later than September 1 annually. The report must contain a comparison analysis by intervention type, including no intervention, and must include:

(a) the number of participating and nonparticipating children and districts;

(b) longitudinal data displaying the proficiency level of participating and nonparticipating children at each grade level following participation in an intervention;

(c) at a time when the data is available, long-term outcome data for participants and nonparticipants, including but not limited to:

(i) assessment data in 8th grade and high school;

(ii) high school graduation rates; and

(iii) postsecondary participation rates; and

(d) a list of schools offering one or more targeted interventions and a list of the matched comparable nonparticipating schools that on the most recent 4th grade statewide reading and math assessments:

(i) had 75% or more of its students score at proficient or above; or

(ii) improved the percentage of students scoring at proficient or above by 10 or more percentage points.

History: En. Sec. 4, Ch. 608, L. 2023; amd. Sec. 1, Ch. 162, L. 2025; amd. Sec. 7, Ch. 439, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 162, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 439, L. 2025. Amendment effective May 5, 2025.

Retroactive Applicability: Section 4, Ch. 162, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to early literacy jumpstart programs conducted following the end of the school calendar year ending in 2025."

CHAPTER 8
MONTANA SCHOOL FOR THE DEAF AND BLIND

Part 1 — General Provisions

20-8-101. Montana school for deaf and blind — state-supported special school.
20-8-102. Objects and purposes — assistance to programs — tracking children who are deaf or hard of hearing or blind — fee.
20-8-103. Board of public education rules.
20-8-104. Eligibility of children for admittance.
20-8-105. Repealed.
20-8-106. Duration of attendance at school — suspension or expulsion — transfer.
20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
20-8-108. Provisions for indigent students.
20-8-109. Time of regular school term.
20-8-110. Property vested in school.
20-8-111. Duty of board of public education as to property of school.
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20-8-113. Duties of superintendent of school for the deaf and blind.
20-8-114. Repealed.
20-8-115. Repealed.
20-8-116. Employment placement — continuing education.
20-8-117. Repealed.
20-8-118. Repealed.
20-8-119. Repealed.
20-8-120. Communications skills required of certain employees.
20-8-121. Transportation of students at school.

Chapter Cross-References

Application of statewide classification and pay plan to school employees, 2-18-103.
Attendance of pupils at schools, Title 20, ch. 5, part 1.
No tuition when attending state institution, 20-7-424.
Rights of persons with disabilities, Title 49, ch. 4.
Developmental disabilities, Title 53, ch. 20.

Part 1
General Provisions

20-8-101. Montana school for deaf and blind — state-supported special school. The school for the deaf and blind, located in the city of Great Falls, is known and designated as the Montana school for the deaf and blind and must be conducted as a separate and independent unit and special school of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name of the school or in the objects or purposes of the school may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school.

History: En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102; amd. Sec. 1, Ch. 151, L. 1983; amd. Sec. 1, Ch. 72, L. 2003.

Cross-References

Board of Public Education, 20-2-121.

20-8-102. Objects and purposes — assistance to programs — tracking children who are deaf or hard of hearing or blind — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or hard of hearing or blind or whose hearing or sight requires specialized support to develop their full educational potential.

(2) The school shall serve as a consultative resource for parents of deaf or hard-of-hearing and visually impaired children not yet enrolled in an educational program and for public schools of the state in which deaf or hard-of-hearing or visually impaired children are enrolled. The school upon request shall ensure that services and programs for deaf or hard-of-hearing or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school may collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance.

(3) The school shall establish a system for tracking a child identified as deaf or hard of hearing or visually impaired from the time of identification as a child with a disability through the child's exit from intervention or educational services.

(4) The object and purpose of the school are to furnish and provide, by the use of specialized methods and systems, an education for the deaf or hard-of-hearing and visually impaired children of this state that is commensurate with the education provided to children who are not deaf or hard of hearing or blind in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens.

History: En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103; amd. Sec. 2, Ch. 151, L. 1983; amd. Sec. 1, Ch. 392, L. 1989; amd. Sec. 1, Ch. 537, L. 1993; amd. Sec. 1, Ch. 73, L. 2003; amd. Sec. 1, Ch. 74, L. 2003; amd. Sec. 3, Ch. 237, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 237, L. 2025. Amendment effective October 1, 2025.

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.

History: En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104; amd. Sec. 2, Ch. 392, L. 1989.

20-8-104. Eligibility of children for admittance. In order to be eligible for services from the Montana school for the deaf and blind, a child may not yet have reached 22 years of age and must be identified under a category of disability related to hearing or vision pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1414.

History: En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105; amd. Sec. 3, Ch. 151, L. 1983; amd. Sec. 1, Ch. 291, L. 1995; amd. Sec. 1, Ch. 41, L. 2005; amd. Sec. 4, Ch. 237, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 237, L. 2025. Amendment effective October 1, 2025.

20-8-105. Repealed. Sec. 6, Ch. 291, L. 1995.

History: En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106; amd. Sec. 4, Ch. 151, L. 1983.

20-8-106. Duration of attendance at school — suspension or expulsion — transfer. (1) Each child admitted to the school is entitled to attend the school until reaching the age of 21 years if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child.

(2) Nothing in this section may be construed to prevent the suspension or expulsion of a child at any time for insubordination or other cause considered good and sufficient by the board of public education and superintendent of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law.

(3) Transfer of a student from the school to another educational placement must comply with rules adopted by the board of public education.

History: En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107; amd. Sec. 5, Ch. 151, L. 1983; amd. Sec. 2, Ch. 291, L. 1995.

20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Deaf or hard-of-hearing or visually impaired children who are not residents of the state of Montana may be admitted to the Montana school for the deaf and blind after proper application for admission, subject to all eligibility requirements prescribed for children who are residents of the state if:

(a) the school is paid in advance a sum of money for each child equal to an estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and

(b) the full capacity of the school is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

(3) Indian children who are Montana residents are eligible for admission and must be admitted to the school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes.

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind from the negotiated agreements described in subsection (2) of this section and through the statutory appropriation provided for in subsection (4) of this section.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108; amd. Sec. 6, Ch. 151, L. 1983; amd. Sec. 3, Ch. 291, L. 1995; amd. Sec. 2, Ch. 151, L. 2005; amd. Sec. 5, Ch. 237, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 237, L. 2025. Amendment effective October 1, 2025.

Cross-References

Rules for determining residence, 1-1-215.

20-8-108. Provisions for indigent students. If a person to be sent to the Montana school for the deaf and blind is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where the person resides, upon application of any relative or friend or of any officer of the county where the person resides, shall, if the judge considers the person a proper subject, make an order to that effect. The order must be certified by the clerk of the court to the superintendent of the school, who shall then provide the necessary clothing and transportation at the expense of the county, and upon the superintendent rendering proper accounts for the expenditures quarter-annually, the county commissioners shall allow and pay the accounts out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109; amd. Sec. 310, Ch. 56, L. 2009.

20-8-109. Time of regular school term. The regular term of school shall be as provided in 20-1-301.

History: En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111; amd. Sec. 7, Ch. 151, L. 1983.

20-8-110. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113; amd. Sec. 8, Ch. 151, L. 1983.

20-8-111. Duty of board of public education as to property of school. The board of public education shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property transferred to the board or to the state of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the school for the deaf and blind. All donations, gifts, devises, or grants vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

History: En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114; amd. Sec. 9, Ch. 151, L. 1983; amd. Sec. 31, Ch. 703, L. 1985; amd. Sec. 30, Ch. 422, L. 1997.

20-8-112. Expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

History: En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116; amd. Sec. 10, Ch. 151, L. 1983.

20-8-113. Duties of superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind shall:

(1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;

(2) prepare and submit reports, summaries, and other information requested by the board;

(3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;

(4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;

(5) pursue a program of information for parents, professionals, and the general public.

History: En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117; amd. Sec. 11, Ch. 151, L. 1983.

20-8-114. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.

20-8-115. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.

20-8-116. Employment placement — continuing education. (1) The superintendent of the Montana school for the deaf and blind or the superintendent's designee shall assist in locating suitable employment for deaf or hard-of-hearing or visually impaired persons in attendance at the school. The superintendent or the superintendent's designee shall:

(a) consult with various county, state, and federal agencies and with the department of public health and human services to secure employment for self-sustaining persons; and

(b) coordinate work with federal programs, such as social security and reemployment for those out of work, as required by this part.

(2) The superintendent or the superintendent's designee, may, within funding limitations, develop and offer continuing education programs of a vocational nature for the deaf or hard of hearing and visually impaired who use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students.

History: En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120; amd. Sec. 12, Ch. 151, L. 1983; amd. Sec. 4, Ch. 291, L. 1995; amd. Sec. 71, Ch. 546, L. 1995; amd. Sec. 6, Ch. 237, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 237, L. 2025. Amendment effective October 1, 2025.

20-8-117. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.

20-8-118. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.

20-8-119. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.

20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf shall acquire acceptable total communications skills as prescribed by the board of public education by the end of the first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

History: En. Sec. 13, Ch. 151, L. 1983; amd. Sec. 311, Ch. 56, L. 2009.

20-8-121. Transportation of students at school. (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

(a) a scheduled air carrier as defined in 67-1-101;

(b) charter with a commercial air operator as defined in 67-1-101;

(c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind;

(d) a school bus as defined in 20-10-101; or

(e) other transportation arrangements approved by the superintendent of the school for the deaf and blind pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for transportation, pursuant to rules adopted by the board of public education on reimbursement.

(4) The transportation of a residential student provided in subsection (1) is limited to the number of round trips to the student's residence as specified in the school calendar approved by the board of public education. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided for travel in excess of the total number of trips approved in any school fiscal year.

History: En. Sec. 1, Ch. 396, L. 1987; amd. Sec. 3, Ch. 392, L. 1989; amd. Sec. 4, Ch. 671, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 671, L. 2025. Amendment effective July 1, 2025.

CHAPTER 9
FINANCE

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Part 9 — Supplemental Funding for Innovative Educational Programs (Repealed)

Chapter Cross-References

Appropriations for public schools, Art. V, sec. 11, Mont. Const.
School district property — exemption from taxation, Art. VIII, sec. 5, Mont. Const.
Investment of public school fund, Art. VIII, sec. 13, Mont. Const.
Public school fund constitutional provisions, Art. X, sec. 2, 3, 5, Mont. Const.
Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.
Statutes imposing new duties on school district to provide means of financing, 1-2-113.
School district tax and revenue anticipation notes, Title 7, ch. 6, part 11.
Investment of local government funds, 17-6-204, 17-6-205.

Part 1

School Budgets

20-9-101. *(Temporary)* **Application of budget system for districts and counties.** The school budgeting procedure and provisions of this title apply to elementary and high school districts, to county funds supporting school district transportation and retirement obligations, and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

20-9-101. *(Effective July 1, 2026)* **Application of budget system for districts and counties.** The school budgeting procedure and provisions of this title apply to elementary and high school districts, to county funds supporting school district BASE budgets, transportation, and retirement obligations, and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979; amd. Sec. 2, Ch. 276, L. 2003; amd. Sec. 8, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Definition of elementary and high school districts, 20-6-101.
Definition of community college districts, 20-15-101.

20-9-102. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Powers and duties of Superintendent of Public Instruction, 20-3-106.

20-9-103. School budget form. (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction, except that a district may in addition, with the approval of the superintendent of public instruction, use a more detailed form.

History: En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704; amd. Sec. 3, Ch. 35, L. 1989.

20-9-104. *(Temporary)* **General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy or the over-BASE budget levy.

(4) Except as provided in subsection (9), any portion of the general fund end-of-the-year fund balance, including any portion attributable to a tax increment remitted under 7-15-4286(3) or 7-15-4291, that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under 7-15-4286(3) or 7-15-4291 and deposited in the district's general fund is not subject to the:

(a) 15% fund balance limit provided for in subsection (4); or

(b) provisions of subsection (5).

20-9-104. *(Effective July 1, 2026)* **General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141 for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the over-BASE budget levy.

(4) Except as provided in subsection (9), any portion of the general fund end-of-the-year fund balance, including any portion attributable to a tax increment remitted under 7-15-4286(3) or 7-15-4291, that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141 up to an amount not exceeding 15% of a school district's maximum general fund budget.

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under 7-15-4286(3) or 7-15-4291 and deposited in the district's general fund is not subject to the:

(a) 15% fund balance limit provided for in subsection (4); or

(b) provisions of subsection (5).

History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924; amd. Sec. 20, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 767, L. 1991; amd. Secs. 2, 12, Ch. 6, Sp. L. July 1992; amd. Sec. 11, Ch. 633, L. 1993; amd. Sec. 1, Ch. 35, Sp. L. November 1993; amd. Sec. 4, Ch. 36, Sp. L. November 1993; amd. Sec. 35, Ch. 18, L. 1995; amd. Sec. 38, Ch. 451, L. 1995; amd. Sec. 1, Ch. 506, L. 1995; amd. Sec. 9, Ch. 554, L. 1999; amd. Sec. 11, Ch. 237, L. 2001; amd. Sec. 7, Ch. 418, L. 2011; amd. Sec. 2, Ch. 329, L. 2013; amd. Sec. 2, Ch. 405, L. 2015; amd. Sec. 3, Ch. 270, L. 2019; amd. Sec. 4, Ch. 640, L. 2023; amd. Sec. 9, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-105. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 121, L. 1981.

20-9-106 through 20-9-110 reserved.

20-9-111. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705; amd. Sec. 4, Ch. 35, L. 1989.

20-9-112. Repealed. Sec. 4, Ch. 183, L. 1983.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

20-9-113. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707; amd. Sec. 1, Ch. 183, L. 1983; (4)En. Sec. 2, Ch. 183, L. 1983; amd. Sec. 12, Ch. 633, L. 1993.

20-9-114. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.

20-9-115. Notice of final budget meeting. Between July 1 and August 10 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the date, time, and place that the trustees will meet for the purpose of considering and adopting the final budget of the district, stating that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and stating that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979; amd. Sec. 1, Ch. 77, L. 1989; amd. Sec. 36, Ch. 18, L. 1995; amd. Sec. 14, Ch. 22, L. 1997; amd. Sec. 112, Ch. 42, L. 1997; amd. Sec. 3, Ch. 211, L. 1997; amd. Sec. 1, Ch. 376, L. 2001; amd. Sec. 6, Ch. 152, L. 2011.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-9-116. *(Temporary)* **Resolution of intent to increase nonvoted levy — notice.** (1) The trustees of a school district shall adopt a resolution no later than March 31 of each fiscal year and provide notice pursuant to subsection (2) whenever the trustees intend to impose an increase in a nonvoted levy in the ensuing school fiscal year for the purposes of funding any of the funds listed below:

(a) the tuition fund under 20-5-324;

(b) the adult education fund under 20-7-705;
(c) the transportation fund under 20-10-143 and 20-10-144;
(d) the bus depreciation reserve fund under 20-10-147; and
(e) the flexibility fund established in 20-9-543 for the purposes in 20-7-1602.

(2) The trustees shall provide notice of intent to impose an increase in a nonvoted levy for the ensuing school fiscal year by:

(a) adopting a resolution of intent to impose an increase in a nonvoted levy that includes, at a minimum, the estimated number of increased or decreased mills to be imposed and the estimated increased or decreased revenue to be raised compared to nonvoted levies under subsections (1)(a) through (1)(e) imposed in the current school fiscal year and, based on the district's taxable valuation most recently certified by the department of revenue under 15-10-202, the estimated impacts of the increase or decrease on homes valued at $100,000, $300,000, and $600,000; and

(b) publishing in a newspaper that will give notice to the largest number of people of the district as determined by the trustees and posting to the school district's website:
(i) the resolution under subsection (2)(a); and
(ii) the resolution under 20-9-502(3)(a)(i) if adopted by the trustees. *(Terminates June 30, 2026—sec. 4, Ch. 462, L. 2025.)*

20-9-116. *(Effective July 1, 2026)* **Resolution of intent to increase nonvoted levy — notice.** (1) The trustees of a school district shall adopt a resolution no later than June 1 in fiscal year 2017 only and no later than March 31 in fiscal year 2018 and subsequent fiscal years and provide notice pursuant to subsection (2) whenever the trustees intend to impose an increase in a nonvoted levy in the ensuing school fiscal year for the purposes of funding any of the funds listed below:
(a) the tuition fund under 20-5-324;
(b) the adult education fund under 20-7-705;
(c) the transportation fund under 20-10-143 and 20-10-144; and
(d) the bus depreciation reserve fund under 20-10-147.

(2) The trustees shall provide notice of intent to impose an increase in a nonvoted levy for the ensuing school fiscal year by:

(a) adopting a resolution of intent to impose an increase in a nonvoted levy that includes, at a minimum, the estimated number of increased or decreased mills to be imposed and the estimated increased or decreased revenue to be raised compared to nonvoted levies under subsections (1)(a) through (1)(d) imposed in the current school fiscal year and, based on the district's taxable valuation most recently certified by the department of revenue under 15-10-202, the estimated impacts of the increase or decrease on homes valued at $100,000, $300,000, and $600,000; and

(b) publishing in a newspaper that will give notice to the largest number of people of the district as determined by the trustees and posting to the school district's website:
(i) the resolution under subsection (2)(a); and
(ii) the resolution under 20-9-502(3)(a)(i) if adopted by the trustees.

History: En. Sec. 1, Ch. 404, L. 2017; amd. Sec. 3, Ch. 402, L. 2019; amd. Sec. 1, Ch. 245, L. 2021; amd. Sec. 1, Ch. 15, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 15, L. 2025. Amendment effective October 1, 2025.

Termination Provision Amended: Section 4, Ch. 462, L. 2025, amended sec. 7, Ch. 402, L. 2019, by shortening the termination date of the Ch. 402 amendments to this section to June 30, 2026. Effective July 1, 2025.

20-9-117 through 20-9-120 reserved.

20-9-121. County treasurer's statement of cash balances and bond information. (1) By July 20, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July 20, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) By July 20, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall forward the information to each district.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710; amd. Sec. 1, Ch. 260, L. 1995; amd. Sec. 4, Ch. 211, L. 1997; amd. Sec. 7, Ch. 152, L. 2011.

Cross-References

School fiscal year, 20-1-301.
Payment of debt service obligations, 20-9-440.
Redemption of bonds, 20-9-441.

20-9-122. Statement of district, city, and town valuations. (1) By the first Monday of August, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711; amd. Sec. 128, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 34, L. 2003.

Cross-References

Assessment and map books, Title 15, ch. 8, part 7.
Entry of taxes, Title 15, ch. 10, part 3.

20-9-123. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

20-9-124 through 20-9-129 reserved.

20-9-130. District obligation for students in youth detention facility. A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's tuition fund or impact aid fund.

History: En. Sec. 1, Ch. 536, L. 1999; amd. Sec. 12, Ch. 237, L. 2001; amd. Sec. 5, Ch. 462, L. 2005.

20-9-131. *(Temporary)* **Final budget meeting.** (1) On or before August 20, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than August 25 and before the computation of the general fund net levy requirement by the county superintendent and the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 3 days.

20-9-131. *(Effective July 1, 2026)* **Final budget meeting.** (1) On or before August 20, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district

not later than August 25 and before the computation of the levy requirements by the county superintendent and the fixing of the tax levies for each district and the county. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 3 days.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979; amd. Sec. 1, Ch. 133, L. 1993; amd. Sec. 5, Ch. 211, L. 1997; amd. Sec. 105, Ch. 584, L. 1999; amd. Sec. 2, Ch. 376, L. 2001; amd. Sec. 6, Ch. 462, L. 2005; amd. Sec. 8, Ch. 152, L. 2011; amd. Sec. 10, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Open meetings, Title 2, ch. 3, part 2.
Meetings and quorum, 20-3-322.

20-9-132. Final budget adjustment procedures. At the final budget meeting of the trustees, the trustees may make any changes or corrections they may consider necessary or proper in any item or amount of the budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the final budget is in excess of the amount actually required to be expended for the item, the trustees shall reduce the amount to the amount actually required to be expended and shall enter in its minutes the reasons for the reduction. If any appropriation item of the final budget provides for the payment of wages or salary to more than one person, the district shall attach to the budget a separate listing of each position of employment, with the budgeted amount of compensation for each position.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714; amd. Sec. 6, Ch. 211, L. 1997.

20-9-133. Adoption and expenditure limitations of final budget. (1) When the trustees determine and set the amount of the budget for each budgeted fund, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and the presiding officer and clerk shall sign the budget form. The resulting budget constitutes the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget or transfers between different funds or between the final budget and a budget amendment may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716; amd. Sec. 1, Ch. 222, L. 1987; amd. Sec. 7, Ch. 568, L. 1991; amd. Sec. 1, Ch. 480, L. 2001.

Cross-References

Personal immunity and liability of trustees, 20-3-332.
Authorization to lease land as obligation of final budget, 20-6-625.

20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 15; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before August 15.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979; amd. Sec. 2, Ch. 260, L. 1995; amd. Sec. 7, Ch. 343, L. 1999; amd. Sec. 9, Ch. 152, L. 2011; amd. Sec. 9, Ch. 351, L. 2021.

20-9-135 through 20-9-139 reserved.

20-9-140. Terminated. Sec. 5, Ch. 561, L. 1999.

History: En. Sec. 2, Ch. 561, L. 1999.

20-9-141. *(Temporary)* **Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(vi) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) after first applying anticipated tuition revenue to the BASE budget under subsection (2)(b), any remaining tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount and a district levy as provided in 20-9-303 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by:

(a) dividing the amount determined in subsection (1)(c) by the sum of:

(i) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(ii) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000; and

(b) if applicable, subtracting the result of dividing any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2), that are available for reduction of the district's BASE budget levy by the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202 divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.

20-9-141. *(Effective July 1, 2026)* **Computation of general fund revenue and levy requirements by county superintendent — BASE funding revenue requirement — over-BASE levy requirement.** (1) The county superintendent shall compute the revenue and levy requirements for each district's general fund as described in this section.

(2) For a district's BASE funding revenue requirement:

(a) Determine the funding required for the BASE area of the district's final general fund budget less the sum of:

(i) the district's BASE aid; and

(ii) if applicable, the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303.

(b) Determine the money available for the reduction of the BASE funding revenue requirement by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund;

(iii) anticipated oil and natural gas production taxes allocated to the BASE portion of the general fund budget at the discretion of school district trustees pursuant to 20-9-310; and

(iv) pursuant to subsection (6), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Subtract the money available to reduce the BASE funding revenue requirement that has been determined in subsection (2)(b) from the amount determined in subsection (2)(a). This is the district's BASE funding revenue requirement. If the amount determined in subsection (2)(b) exceeds the amount determined in subsection (2)(a), the district's BASE funding revenue requirement is $0 and the excess amount from subsection (2)(b) must be applied to reducing the over-BASE levy under subsection (3).

(3) For the district's over-BASE budget levy:

(a) Determine the sum of:

(i) any excess amount remaining after the determination in subsection (2)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the over-BASE budget levy;

(iii) anticipated oil and natural gas production taxes allocated to the over-BASE portion of the general fund budget at the discretion of school district trustees pursuant to 20-9-310;

(iv) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(v) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(b) Subtract the amount determined in subsection (3)(a) from the district's over-BASE budget. This is this the district's over-BASE budget levy.

(4) The county superintendent shall:

(a) utilize a district's BASE funding revenue requirement calculated under subsection (2) to determine the countywide levy for BASE funding support as described in 20-9-362; and

(b) report a district's over-BASE budget levy amount to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and a levy must be set by the county commissioners in accordance with 20-9-142.

(5) If a district has an amount of revenue directed to funding the district's general fund under this section that results in an excess of revenue required to fund the district's over-BASE levy as calculated in subsection (3), the trustees of the district shall allocate that excess to another budgeted fund of the district to reduce local property taxes by the amount of the excess.

(6) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987; amd. Sec. 5, Ch. 35, L. 1989; amd. Secs. 21, 83, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 267, L. 1991; amd. Sec. 8, Ch. 767, L. 1991; amd. Sec. 6, Ch. 133, L. 1993; amd. Sec. 2, Ch. 325, L. 1993; amd. Sec. 14, Ch. 563, L. 1993; amd. Sec. 13, Ch. 633, L. 1993; amd. Sec. 16, Ch. 9, Sp. L. November 1993; amd. Sec. 2, Ch. 35, Sp. L. November 1993; amd. Sec. 39, Ch. 451, L. 1995; amd. Sec. 2, Ch. 580, L. 1995; amd. Sec. 2, Ch. 389, L. 1997; amd. Sec. 9, Ch. 496, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 180, L. 1999; amd. Sec. 14, Ch. 515, L. 1999; amd. Secs. 106, 170(3), Ch. 584, L. 1999; amd. Sec. 7, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 191, L. 2001; amd. Sec. 5, Ch. 464, L. 2001; amd. Sec. 117, Ch. 574, L. 2001; amd. Sec. 27, Ch. 130, L. 2005; amd. Sec. 1, Ch. 173, L. 2007; amd. Sec. 10, Ch. 152, L. 2011; amd. Sec. 5, Ch. 400, L. 2013; amd. Sec. 3, Ch. 405, L. 2015; amd. Sec. 4, Ch. 336, L. 2017; amd. Sec. 3, Ch. 2, Sp. L. November 2017; amd. Sec. 1, Ch. 128, L. 2019; amd. Sec. 4, Ch. 270, L. 2019; amd. Sec. 2, Ch. 240, L. 2023; amd. Sec. 6, Ch. 368, L. 2023; amd. Sec. 5, Ch. 640, L. 2023; amd. Sec. 11, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

20-9-142. Fixing and levying taxes by board of county commissioners. By the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners, as provided in 7-6-4036, to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986; amd. Sec. 9, Ch. 767, L. 1991; amd. Sec. 7, Ch. 133, L. 1993; amd. Sec. 107, Ch. 584, L. 1999; amd. Sec. 7, Ch. 462, L. 2005; amd. Sec. 11, Ch. 152, L. 2011.

Cross-References

Property tax levies, Title 15, ch. 10.
Boundary change — effect on property tax valuation, 20-6-412.
Adult education fund levy, 20-7-705.
Bus depreciation reserve fund, 20-10-147.

20-9-143. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or funds designated in lieu of the federal act by the congress of the United States must be deposited in the impact aid fund established in 20-9-514.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718; amd. Sec. 14, Ch. 633, L. 1993; amd. Sec. 15, Ch. 22, L. 1997.

Cross-References

Power to accept gifts, 20-6-601.

Trustees allocation of federal funds to school food service, 20-10-204, 20-10-205.

20-9-144 reserved.

20-9-145. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 101, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 767, L. 1991.

20-9-146 reserved.

20-9-147. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 50, Ch. 767, L. 1991; amd. Sec. 3, Ch. 466, L. 1993.

20-9-148 through 20-9-150 reserved.

20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values.

History: Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721; amd. Sec. 108, Ch. 584, L. 1999; amd. Sec. 8, Ch. 462, L. 2005; amd. Sec. 12, Ch. 152, L. 2011.

20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722; amd. Sec. 109, Ch. 584, L. 1999; amd. Sec. 9, Ch. 462, L. 2005; amd. Sec. 13, Ch. 152, L. 2011; amd. Sec. 5, Ch. 62, L. 2013.

Cross-References

Property tax levies, Title 15, ch. 10.

20-9-153 through 20-9-160 reserved.

20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget

for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting:

(a) the safety of the students and district employees; or

(b) the educational functions of the district. Any budget amendment adopted pursuant to this subsection (6)(b) that in combination with other budget amendments within the same school fiscal year exceeds 10% of the district's adopted general fund budget must be reported by the school district to the education interim committee in accordance with 5-11-210 and the board of public education with an explanation of why the budget amendment is necessary.

History: **En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979; amd. Sec. 11, Ch. 767, L. 1991; amd. Sec. 40, Ch. 451, L. 1995; amd. Sec. 16, Ch. 22, L. 1997; amd. Sec. 10, Ch. 554, L. 1999; amd. Sec. 11, Ch. 418, L. 2011; amd. Sec. 53, Ch. 261, L. 2021.**

Cross-References

Statutes imposing new duties on school district to provide means of financing, 1-2-113.
Liability exposure and insurance coverage, Title 2, ch. 9.
Disaster and emergency services, Title 10, ch. 3.

20-9-162. Authorization for budget amendment adoption. (1) (a) Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase as provided in 20-9-161(1) may not be adopted until after October 1.

(b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of public instruction for approval in the manner provided in 20-9-163.

History: **En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724; amd. Sec. 12, Ch. 767, L. 1991; amd. Sec. 15, Ch. 633, L. 1993.**

Cross-References

Emergency transportation fund budget, 20-10-143.

20-9-163. Resolution for budget amendment — petition to superintendent of public instruction. (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. The superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979; amd. Sec. 13, Ch. 767, L. 1991; amd. Sec. 16, Ch. 633, L. 1993; amd. Sec. 13, Ch. 237, L. 2001.

20-9-164. Notice of budget amendment resolution. A copy of the budget amendment resolution must be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution must be posted at each schoolhouse of the district. A copy of the budget amendment resolution must also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution must be done not less than 1 week before the day specified in the resolution for the consideration and adoption of a budget amendment.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726; amd. Sec. 14, Ch. 767, L. 1991.

20-9-165. Budget amendment limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a final budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the final budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) determine the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve;

(b) divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the final budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the superintendent of public instruction.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979; amd. Sec. 69, Ch. 370, L. 1987; amd. Sec. 15, Ch. 767, L. 1991; amd. Sec. 42, Ch. 633, L. 1993; amd. Sec. 3, Ch. 260, L. 1995; amd. Sec. 7, Ch. 211, L. 1997.

Cross-References

Open meetings, Title 2, ch. 3, part 2.
School fiscal year, 20-1-301.
Meetings and quorum, 20-3-322.

20-9-166. Financial support for transportation budget amendments and significant enrollment increases. (1) Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application for state transportation reimbursement. The superintendent of public instruction shall approve or disapprove each application for state transportation reimbursement. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state transportation reimbursement that will be made available to the applicant district because of additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

(2) (a) When a district experiences an enrollment increase based on the October enrollment count, the district may be eligible for a significant enrollment increase payment in support of the district's general fund as described in this subsection (2). All enrollment increases under this subsection (2) must be calculated separately for each budget unit of a school district.

(b) To be eligible for a significant enrollment increase payment, a district's October enrollment count in the current year converted to ANB must exceed the district's budget limit ANB for the school fiscal year 3 years prior by 110% or more. The significant enrollment increase payment the district qualifies for must be calculated by the superintendent of public instruction no later than December 1 following the October enrollment count as the difference between:

(i) an amount equal to 80% of the district's total per-ANB entitlement for that fiscal year if the district's budget limit ANB was calculated using the district's actual October enrollment count minus the absorption factor; and

(ii) 80% of the district's total per-ANB entitlement for that fiscal year.

(c) (i) The superintendent of public instruction shall notify a district of the district's eligibility for a significant enrollment increase payment and the amount by December 15.

(ii) The trustees of the district shall determine at the next scheduled board meeting and no later than March 1 whether to accept the full or a partial amount of the payment and adopt a general fund budget amendment for any accepted amount. A budget amendment under this section must be made by resolution of the trustees of the district and is not subject to the requirements of other budget amendments under Title 20, chapter 9, part 1. The trustees shall provide a copy of the budget amendment to the superintendent of public instruction in a manner determined by the superintendent of public instruction.

(iii) On receiving a copy of the budget amendment, the superintendent of public instruction shall disburse from the BASE aid appropriation in House Bill No. 2 the amount of the accepted payment distributed with the remaining direct state aid payments for that fiscal year pursuant to 20-9-344.

(d) A district receiving additional financial support under this subsection (2) shall deposit the money in the district's general fund and use it to address costs associated with the enrollment increase.

(e) For the purposes of this subsection (2), "absorption factor" means an ANB amount rounded to the nearest whole number equal to the sum of 5 ANB plus 3% of the district's budget limit ANB for that fiscal year.

History: **En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729; amd. Sec. 16, Ch. 767, L. 1991; amd. Sec. 43, Ch. 633, L. 1993; amd. Sec. 32, Ch. 509, L. 1995; amd. Sec. 17, Ch. 22, L. 1997; amd. Sec. 8, Ch. 343, L. 1999; amd. Sec. 3, Ch. 551, L. 2021; amd. Sec. 3, Ch. 240, L. 2023; amd. Sec. 1, Ch. 160, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 160, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 3, Ch. 160, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
State transportation reimbursement, 20-10-145.

20-9-167. Repealed. Sec. 56, Ch. 767, L. 1991.

History: **En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.**

20-9-168. Emergency budget amendment tax levy. When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment.

History: **En. Sec. 11, Ch. 6, Sp. L. July 1992; amd. Sec. 44, Ch. 633, L. 1993; amd. Sec. 110, Ch. 584, L. 1999; amd. Sec. 14, Ch. 237, L. 2001; amd. Sec. 118, Ch. 574, L. 2001.**

Part 2
Administration of Finances

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.
Duty of Superintendent of Public Instruction to supervise school financial administration, 20-3-106.
Duty of trustees to conduct financial business of district, 20-3-324.

20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, custodial fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

History: **(1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd.**

Sec. 22, Ch. 392, L. 1979; amd. Sec. 3, Ch. 135, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 2, Ch. 1, Sp. L. June 1989; amd. Sec. 22, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 568, L. 1991; amd. Sec. 17, Ch. 767, L. 1991; amd. Sec. 17, Ch. 633, L. 1993; amd. Sec. 2, Ch. 493, L. 1995; amd. Sec. 1, Ch. 356, L. 2001; amd. Sec. 2, Ch. 480, L. 2001; amd. Sec. 12, Ch. 418, L. 2011; amd. Sec. 7, Ch. 185, L. 2019.

Cross-References

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.
Public school fund, Art. X, sec. 5, Mont. Const.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Adult education fund, 20-7-705.
Special purpose funds — budgeted funds, Title 20, ch. 9, part 5.
Transportation fund budget required, 20-10-143.
School food services fund a nonbudgeted fund, 20-10-207.

20-9-202. County officials for financial administration when joint district. (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-203. Examination of district accounting records. The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of administration, the superintendent of public instruction, and the county superintendent.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981; amd. Sec. 1, Ch. 115, L. 1985; amd. Sec. 24, Ch. 489, L. 1991; amd. Sec. 52, Ch. 483, L. 2001.

Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.

20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(6), or as provided in subsections (4) and (6) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds $80,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.

(5) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983; amd. Sec. 1, Ch. 154, L. 1991; amd. Sec. 1, Ch. 39, L. 1995; amd. Sec. 1, Ch. 368, L. 1999; amd. Sec. 1, Ch. 75, L. 2001; amd. Sec. 1, Ch. 103, L. 2001; amd. Sec. 10, Ch. 162, L. 2005; amd. Sec. 10, Ch. 574, L. 2005; amd. Sec. 1, Ch. 106, L. 2007; amd. Sec. 1, Ch. 178, L. 2009; amd. Sec. 13, Ch. 418, L. 2011; amd. Sec. 3, Ch. 110, L. 2013; amd. Sec. 8, Ch. 396, L. 2023.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
Preference to Montana contractors, 18-1-102.
Security to accompany bids, 18-1-203.
Preference to Montana labor, 18-2-403.
Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.
School officers not to act as agents, 20-1-201.
Conflict of interest, 20-1-205.
Penalty for violation of school laws, 20-1-207.
Candidate qualification and nomination, 20-3-305.
Letting contracts for school facilities, 20-6-606.
School bus purchase — contract — bids, 20-10-110.
Transportation contract — bid letting, 20-10-125.

20-9-205. Prohibition on division of contracts to circumvent bid requirements. (1) Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

20-9-206. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809; amd. Sec. 18, Ch. 767, L. 1991.

20-9-207. Documentation of expenditures. (1) The expenditure of district money, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, in which the payee attests to the accuracy of the claim and that the payee has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district money.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1; amd. Sec. 312, Ch. 56, L. 2009.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-208. Transfers among appropriation items of fund — transfers from fund to fund. (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in subsections (2)(a)(ii) through (2)(a)(iv), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless:

(A) the transfer is within or directly related to the purposes for which the funds were raised and the trustees hold a properly noticed hearing to accept public comment on the transfer; or

(B) the transfer is approved by the qualified electors of the district in an election called for the purpose of approving the transfer, in which case the funds may be spent for the purpose approved on the ballot.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(iii) Unless otherwise authorized by a specific provision in this title, transfers from the retirement fund to any other fund are prohibited.

(iv) Unless otherwise authorized by a specific provision in this title, transfers from the debt service fund to any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812; amd. Sec. 19, Ch. 767, L. 1991; amd. Sec. 45, Ch. 633, L. 1993; amd. Sec. 3, Ch. 480, L. 2001; amd. Sec. 14, Ch. 418, L. 2011; amd. Sec. 3, Ch. 329, L. 2013.

Cross-References

School fiscal year, 20-1-301.

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. (1) All appropriations for a budgeted fund in the regular budget or for a budget amendment for a given school fiscal year lapse on the last day of the school fiscal year, except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) an obligation for the purchase of personal property ordered but not paid for during the current fiscal year.

(2) A lawful claim presented to the district for payment under a lapsed appropriation is an obligation of the budget for the next school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813; amd. Sec. 1, Ch. 478, L. 1983; amd. Sec. 20, Ch. 767, L. 1991; amd. Sec. 4, Ch. 260, L. 1995.

Cross-References

School fiscal year, 20-1-301.

20-9-210. Expenditure limitation of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund is the amount of cash balance of the nonbudgeted fund.

History: En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814; amd. Sec. 21, Ch. 767, L. 1991.

20-9-211. Repealed. Sec. 26, Ch. 152, L. 2011.

History: En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804; amd. Sec. 16, Ch. 133, L. 1993.

20-9-212. *(Temporary)* **Duties of county treasurer.** The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law.

Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2605 and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of $50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

20-9-212. *(Effective July 1, 2026)* **Duties of county treasurer.** The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations;

(e) the county tax for elementary and high school district BASE funding support; and

(f) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance

with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2605 and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, the county tax for elementary and high school district BASE funding support, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of $50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979; amd. Sec. 1, Ch. 234, L. 1983; amd. Sec. 1, Ch. 438, L. 1985; amd. Sec. 12, Ch. 481, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 23, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 711, L. 1991; amd. Sec. 3, Ch. 6, Sp. L. July 1992; amd. Sec. 17, Ch. 133, L. 1993; amd. Sec. 46, Ch. 633, L. 1993; amd. Sec. 5, Ch. 260, L. 1995; amd. Sec. 14, Ch. 308, L. 1995; amd. Sec. 18, Ch. 22, L. 1997; amd. Sec. 1, Ch. 102, L. 1999; amd. Sec. 9, Ch. 257, L. 2001; amd. Sec. 6, Ch. 464, L. 2001; amd. Sec. 2, Ch. 196, L. 2005; amd. Sec. 5, Ch. 463, L. 2005; amd. Sec. 21, Ch. 262, L. 2015; amd. Sec. 12, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Cross-References

Local government — duties of County Treasurer, 7-6-2111.
Management of school funds, 7-6-2801.
Teachers' retirement, Title 19, ch. 20.
School fiscal year, 20-1-301.
School buses and transportation, Title 20, ch. 10, part 1.

20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted on or before August 15 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806; amd. Sec. 1, Ch. 45, L. 1981; amd. Sec. 16, Ch. 421, L. 1985; amd. Sec. 1, Ch. 428, L. 1987; amd. Sec. 6, Ch. 35, L. 1989; amd. Sec. 3, Ch. 1, Sp. L. June 1989; amd. Sec. 24, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 489, L. 1991; amd. Sec. 39, Ch. 10, L. 1993; amd. Sec. 18, Ch. 133, L. 1993; amd. Sec. 6, Ch. 260, L. 1995; amd. Sec. 3, Ch. 406, L. 1995; amd. Sec. 2, Ch. 102, L. 1999; amd. Sec. 2, Ch. 205, L. 2001; amd. Sec. 14, Ch. 152, L. 2011.

Cross-References

Investment of certain construction bond proceeds, 7-7-2112.
Authority to request, accept, and disburse money, 20-3-208.
Duties of trustees, 20-3-324.
Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

20-9-214. Fees. (1) The trustees of a district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for a course or activity not reasonably related to a recognized academic and educational goal of the district or a course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1)(a) must be deposited in the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in a nonbudgeted fund as provided in 20-9-210.

History: En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322; amd. Sec. 1, Ch. 486, L. 1985; amd. Sec. 22, Ch. 767, L. 1991.

20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years.

History: En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979; amd. Sec. 3, Ch. 543, L. 1983.

Cross-References

Destruction of old records by officer, 20-1-212.

20-9-216 through 20-9-219 reserved.

20-9-220. Clearing accounts. (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

History: En. Sec. 1, Ch. 263, L. 1987.

20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants must identify the fund on which the warrant is drawn.

(2) All warrants issued by a district must be countersigned by the presiding officer of the trustees and the clerk of the district before the warrants are negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section may not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees may issue warrants in multiple copies. If multiple copies are issued, the copies must be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979; amd. Sec. 1, Ch. 43, L. 1989; amd. Sec. 23, Ch. 767, L. 1991; amd. Sec. 7, Ch. 260, L. 1995.

Cross-References

County warrants, Title 7, ch. 6, part 26.

20-9-222. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

20-9-223. Cancellation of outstanding warrants — duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been canceled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

20-9-224. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

20-9-225. Definitions relating to interest assessment. As used in 20-9-226 and 20-9-227, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

History: En. Sec. 4, Ch. 413, L. 1985.

20-9-226. Interest assessed on amounts due. (1) Except as provided in 20-9-227, a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

History: En. Sec. 5, Ch. 413, L. 1985.

20-9-227. Exemptions from interest assessment. Section 20-9-226 does not apply to the following:

(1) third-class school districts where the board of trustees does not meet monthly;

(2) interdistrict or intergovernmental transactions;

(3) claims subject to a good faith dispute;

(4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;

(5) contracts entered into before October 1, 1985; or

(6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 6, Ch. 413, L. 1985.

20-9-228 through 20-9-230 reserved.

20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(e) may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title.

History: En. Sec. 18, Ch. 672, L. 1989; amd. Sec. 24, Ch. 767, L. 1991; amd. Sec. 7, Ch. 577, L. 1995; amd. Sec. 6, Ch. 144, L. 1999.

20-9-232 through 20-9-234 reserved.

20-9-235. *(Temporary)* **Authorization for school district investment account.** (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) coincide with fiscal years beginning on July 1 and ending on June 30.

(b) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Unless otherwise provided by law, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts.

20-9-235. *(Effective July 1, 2026)* **Authorization for school district investment account.** (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) coincide with fiscal years beginning on July 1 and ending on June 30.

(b) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Unless otherwise provided by law, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated to reduce the district's BASE funding revenue requirement as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the

amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts.

History: **En. Sec. 1, Ch. 205, L. 2001; amd. Sec. 1, Ch. 411, L. 2003; amd. Sec. 15, Ch. 19, L. 2011; amd. Sec. 4, Ch. 329, L. 2013; amd. Sec. 1, Ch. 166, L. 2019; amd. Sec. 13, Ch. 424, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-236. Transfer of funds — improvements to school safety and security. (1) A school district that has certified to the office of public instruction a current school safety plan or emergency operations plan pursuant to 20-1-401 may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school and student safety and security as follows:

(a) planning for improvements to and maintenance of school and student safety, including but not limited to the cost of staffing for or services provided by architects, engineers, school resource officers, counselors, and other staff or consultants assisting the district with improvements to school and student safety and security;

(b) programs and training for school employees, students, parents, and community members approved by the trustees to support school and student safety and security, including but not limited to active shooter training, threat assessment practices pursuant to 20-1-401(3)(b), and restorative justice;

(c) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(d) installing or updating bullet-resistant windows and barriers;

(e) installing or updating emergency response systems using contemporary technologies; and

(f) providing automated external defibrillators and making other student safety improvements pursuant to 20-7-1339.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds.

History: **En. Sec. 9, Ch. 364, L. 2013; amd. Sec. 2, Ch. 323, L. 2015; amd. Sec. 3, Ch. 404, L. 2017; amd. Sec. 1, Ch. 253, L. 2019; amd. Sec. 2, Ch. 245, L. 2021; amd. Sec. 2, Ch. 348, L. 2023; amd. Sec. 2, Ch. 742, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 742, L. 2025. Amendment effective July 1, 2025.

20-9-237 through 20-9-239 reserved.

20-9-240. Repealed. Sec. 6, Ch. 739, L. 2023.

History: **En. Sec. 2, Ch. 562, L. 2021.**

20-9-241 through 20-9-249 reserved.

20-9-250. *(Temporary)* **Innovative educational program account — revenue allocated — appropriations from account.** (1) There is an innovative educational program account in the state special revenue fund established in 17-2-102. The funds in the account must be administered by the superintendent of public instruction.

(2) The superintendent of public instruction shall deposit in the account innovative educational program donations transferred from school districts because the donations exceed the limits provided for in 15-30-3110(7).

(3) Interest and earnings on the account must be deposited in the account.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction for distribution pursuant to 15-30-3110(7)(c) to school districts that receive advanced opportunity aid under 20-7-1506(4). The funds must be distributed in addition to the advanced opportunity aid distributions under 20-7-1506(4) and at the same time and in the same proportion as the advanced opportunity aid distributions. *(Terminates December 31, 2029—sec. 12, Ch. 558, L. 2023.)*

History: En. Sec. 1, Ch. 558, L. 2023.

Part 3
Funding of Basic System of Quality Public Schools

Part Cross-References

Legislature to provide free public education — equality of educational opportunity, Art. X, sec. 1, Mont. Const.
ANB defined, 20-1-101.
School fiscal year, 20-1-301.
Definition of various schools, 20-6-501.

20-9-301. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901; amd. Sec. 25, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 767, L. 1991.

20-9-302. School isolation. (1) Except as provided in 20-6-502(4)(b), the trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application must be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. The application must include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of the school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners for their consideration on or before May 15. The board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The board may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of the school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit the application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove the application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on the superintendent's own initiative. An elementary or high school may not be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608; amd. Sec. 1, Ch. 347, L. 1981; amd. Sec. 2, Ch. 105, L. 2001.

Cross-References

Abandonment of elementary district, 20-6-209.
Abandonment of high school district, 20-6-307.

20-9-303. Nonisolated school BASE budget funding — special education funds. (1) An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district's ensuing year's allowable cost payment for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906; amd. Sec. 1, Ch. 317, L. 1981; amd. Sec. 2, Ch. 347, L. 1981; amd. Sec. 26, Ch. 11, Sp. L. June 1989; amd. Sec. 18, Ch. 633, L. 1993; amd. Sec. 5, Ch. 208, L. 2005.

Cross-References

Property tax levies, Title 15, ch. 10.
Special education for exceptional children, Title 20, ch. 7, part 4.
Schedule of allowable costs for determining maximum-budget-without-a-vote, 20-7-431.

20-9-304. Repealed. Sec. 3, Ch. 325, L. 1993.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925; amd. Sec. 25, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

20-9-305. Proration and calculation of BASE funding program for joint district. (1) In joint districts, the direct state aid of a joint district must be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the direct state aid for which each county is obligated. The proration of the joint district direct state aid must be calculated as follows:

(a) Divide the joint district direct state aid by the ANB of the joint district to determine the per-ANB amount of the direct state aid.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties must equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the direct state aid determined in subsection (1)(a) by the ANB for each county's portion, as determined in subsection (1)(b), to determine the portion of the direct state aid for each county.

(2) The portion of a joint district direct state aid for each county, as determined in subsection (1)(c), is a separate direct state aid amount in the county for the purposes of calculating the various revenues for the BASE funding program. After the calculation of the direct state aid revenues, the remainder of the general fund revenues must be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927; amd. Sec. 19, Ch. 633, L. 1993.

20-9-306. *(Temporary)* **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) subject to adjustment under 20-9-336, guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator and qualified staff payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment;

(f) the total American Indian achievement gap payment;

(g) the total data-for-achievement payment;
(h) the total future ready payment; and
(i) the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes:
(a) subject to adjustment under 20-9-336, 80% of the basic entitlement and 80% of the total per-ANB entitlement;
(b) 100% of the following payments:
(i) the total quality educator and qualified staff payment;
(ii) the total at-risk student payment;
(iii) the total Indian education for all payment;
(iv) the total American Indian achievement gap payment;
(v) the total data-for-achievement payment; and
(vi) the total future ready payment; and
(c) 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the general fund BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:
(a) for each high school district:
(i) $364,401 for fiscal year 2026 and $375,333 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and
(ii) $364,401 for fiscal year 2026 and $375,333 for each succeeding fiscal year for school districts with an ANB of more than 800, plus $18,221 for fiscal year 2026 and $18,768 for each succeeding fiscal year for each additional 80 ANB over 800;
(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:
(i) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and
(ii) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $3,037 for fiscal year 2026 and $3,128 for each succeeding fiscal year for each additional 25 ANB over 250;
(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:
(i) for the district's kindergarten through grade 6 elementary program:
(A) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and
(B) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $3,037 for fiscal year 2026 and $3,128 for each succeeding fiscal year for each additional 25 ANB over 250; and
(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:
(A) $121,466 for fiscal year 2026 and $125,110 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and
(B) $121,466 for fiscal year 2026 and $125,110 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus $6,073 for fiscal year 2026 and $6,255 for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) (a) "Maximum general fund budget" means, except as provided in subsection (9)(b), a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator and qualified staff payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, the total future ready payment, and the greater of the district's special education allowable cost payment multiplied by:

(i) 175%; or

(ii) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(b) (i) For a district that meets the legislative goal for base teacher pay under 20-9-324 and has territory within a county in which the median market value for residential properties is greater than 105% of the median county market value for residential properties in the state, the maximum general fund budget is calculated by multiplying the amount calculated in subsection (9)(a) by the percentage by which the county median market value exceeds the median county market value for residential properties in the state divided by 60 and rounded to the nearest hundredth of a percent.

(ii) The department of revenue shall calculate the median market values in subsection (9)(b)(i), excluding properties with a market value of $50,000 or less, in odd-numbered calendar years and report this information to the office of public instruction no later than December 1. The values reported must apply to the calculations in subsection (9)(b)(i) and the maximum general fund budgets of districts calculated under this subsection (9) in the 2 school fiscal years beginning the following July 1.

(iii) A district adopting a higher general fund budget under this subsection (9)(b) shall expend the additional budget authority under this subsection (9)(b) on:

(A) housing stipends for employees;

(B) construction or purchase of district-owned housing provided for employees;

(C) rental assistance, including subsidies or discounts on rents on housing for employees;

(D) down-payment assistance, including district provided funds to assist employees with the initial down payment on a primary residence;

(E) shared ownership of housing by the district and employee with an option for the employee to buy out the district's interest over time;

(F) district guaranteed or subsidized housing loans, including payment of discount points on housing loans secured by an employee;

(G) relocation assistance; or

(H) any other financial assistance to employees authorized by the Internal Revenue Code, the purpose of which is to improve employee access to affordable housing.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and within the general fund budget limits established in 20-9-308 and calculated as provided in 20-9-141.

(11) "State's share" means the state funding distributed to school districts in an equitable manner by the state to support the basic elementary and secondary school system as provided in Article X, section 1(3), of the Montana constitution, including:

(a) BASE aid for the school district general fund;

(b) retirement guaranteed tax base aid to the counties to support the countywide school retirement funds that is then distributed to school districts to support employer contributions to the retirement systems;

(c) major maintenance aid for the school district building reserve fund;

(d) transportation reimbursements for the school district transportation fund;

(e) debt service assistance for the school district debt service fund;

(f) technology funding for the school district technology acquisition and depreciation fund;

(g) career and technical education funding for the school district miscellaneous programs fund;

(h) advanced opportunity aid for the school district flexibility fund to help develop the full educational potential of each student;

(i) gifted and talented funding for the school district miscellaneous programs fund; and

(j) any other state funding provided by the legislature to support the basic elementary and secondary school system.

(12) "Total American Indian achievement gap payment" means the payment resulting from multiplying $249 for fiscal year 2026 and $256 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying $24.29 for fiscal year 2026 and $25.02 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(15) "Total future ready payment" means the payment provided in 20-9-381 resulting from adding:

(a) (i) for a high school district or K-12 school district, the product of 10% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 1 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 10% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(a)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(b) (i) for a high school district or K-12 school district, the product of 20% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 2 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 20% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(b)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(c) (i) for a high school district or K-12 school district, the product of 30% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 3 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 30% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(c)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(16) "Total Indian education for all payment" means the payment resulting from multiplying $25.37 for fiscal year 2026 and $26.13 for each succeeding fiscal year times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(17) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of $8,317 for fiscal year 2026 and $8,567 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of $6,496 for fiscal year 2026 and $6,691 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of $6,496 for fiscal year 2026 and $6,691 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $8,317 for fiscal year 2026 and $8,567 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(18) (a) "Total quality educator and qualified staff payment" means the payment resulting from multiplying $3,783 for fiscal year 2026 and $3,896 for each succeeding fiscal year by the number of full-time equivalent quality educators and qualified staff as provided in 20-9-327, or as provided in 20-9-324, for an educational entity meeting the legislative goal for competitive base pay of teachers, by two times the number of full-time equivalent quality educators and qualified staff as provided in 20-9-327.

(b) If an educational entity qualifies for enhanced quality educator and qualified staff payments under 20-9-324 in a fiscal year, the entity retains that qualification in subsequent years unless the district fails to qualify for 2 consecutive years. After 2 consecutive years of failure to qualify, an educational entity must reestablish eligibility before the enhanced quality educator and qualified staff payments under 20-9-324 resume for the educational entity.

(c) For a school district qualifying for the shared resource incentive under 20-9-383, the district must receive additions to the total quality educator and qualified staff payment as described in 20-9-383.

(d) The total quality educator and qualified staff payment for a district meeting the legislative goal for countywide resource sharing under 20-3-363 must have its total quality educator and qualified staff payment under subsection (18)(a) of this section increased by 50% as described in 20-3-363.

(19) "Total special education allocation" means the state payment distributed pursuant to 20-9-321 that is the greater of the amount resulting from multiplying $311.63 for fiscal year 2026 and $320.98 for each succeeding fiscal year by the statewide current year ANB or the amount of the previous year's total special education allocation.

20-9-306. *(Effective July 1, 2026)* **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) the total quality educator and qualified staff payment;

(c) the total at-risk student payment;

(d) the total Indian education for all payment;

(e) the total American Indian achievement gap payment;

(f) the total data-for-achievement payment;

(g) the total future ready payment; and

(h) the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes:

(a) subject to adjustment under 20-9-336, 80% of the basic entitlement and 80% of the total per-ANB entitlement;

(b) 100% of the following payments:

(i) the total quality educator and qualified staff payment;

(ii) the total at-risk student payment;

(iii) the total Indian education for all payment;

(iv) the total American Indian achievement gap payment;

(v) the total data-for-achievement payment; and

(vi) the total future ready payment; and

(c) 140% of the special education allowable cost payment.

(4) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the general fund BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(5) "BASE funding revenue requirement" means the amount calculated in support of the BASE budget of a district, which is funded by the countywide levy for BASE funding support under 20-9-362 and may be supplemented by guaranteed tax base aid if the county is eligible under the provisions of 20-9-366 through 20-9-369.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) $364,401 for fiscal year 2026 and $375,333 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) $364,401 for fiscal year 2026 and $375,333 for each succeeding fiscal year for school districts with an ANB of more than 800, plus $18,221 for fiscal year 2026 and $18,768 for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $3,037 for fiscal year 2026 and $3,128 for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) $60,732 for fiscal year 2026 and $62,554 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $3,037 for fiscal year 2026 and $3,128 for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) $121,466 for fiscal year 2026 and $125,110 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) $121,466 for fiscal year 2026 and $125,110 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus $6,073 for fiscal year 2026 and $6,255 for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) (a) "Maximum general fund budget" means, except as provided in subsection (9)(b), a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator and qualified staff payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, the total future ready payment, and the greater of the district's special education allowable cost payment multiplied by:

(i) 175%; or

(ii) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(b) (i) For a district that meets the legislative goal for base teacher pay under 20-9-324 and has territory within a county in which the median market value for residential properties is greater than 105% of the median county market value for residential properties in the state, the maximum general fund budget is calculated by multiplying the amount calculated in subsection (9)(a) by the percentage by which the county median market value exceeds the median county market value for residential properties in the state divided by 60 and rounded to the nearest hundredth of a percent.

(ii) The department of revenue shall calculate the median market values in subsection (9)(b)(i), excluding properties with a market value of $50,000 or less, in odd-numbered calendar years and report this information to the office of public instruction no later than December 1. The values reported must apply to the calculations in subsection (9)(b)(i) and the maximum general fund budgets of districts calculated under this subsection (9) in the 2 school fiscal years beginning the following July 1.

(iii) A district adopting a higher general fund budget under this subsection (9)(b) shall expend the additional budget authority under this subsection (9)(b) on:

(A) housing stipends for employees;

(B) construction or purchase of district-owned housing provided for employees;

(C) rental assistance, including subsidies or discounts on rents on housing for employees;

(D) down-payment assistance, including district provided funds to assist employees with the initial down payment on a primary residence;

(E) shared ownership of housing by the district and employee with an option for the employee to buy out the district's interest over time;

(F) district guaranteed or subsidized housing loans, including payment of discount points on housing loans secured by an employee;

(G) relocation assistance; or

(H) any other financial assistance to employees authorized by the Internal Revenue Code, the purpose of which is to improve employee access to affordable housing.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and within the general fund budget limits established in 20-9-308 and calculated as provided in 20-9-141.

(11) "State's share" means the state funding distributed to school districts in an equitable manner by the state to support the basic elementary and secondary school system as provided in Article X, section 1(3), of the Montana constitution, including:

(a) BASE aid for the school district general fund;

(b) retirement guaranteed tax base aid to the counties to support the countywide school retirement funds that is then distributed to school districts to support employer contributions to the retirement systems;

(c) major maintenance aid for the school district building reserve fund;

(d) transportation reimbursements for the school district transportation fund;

(e) debt service assistance for the school district debt service fund;

(f) technology funding for the school district technology acquisition and depreciation fund;

(g) career and technical education funding for the school district miscellaneous programs fund;

(h) advanced opportunity aid for the school district flexibility fund to help develop the full educational potential of each student;

(i) gifted and talented funding for the school district miscellaneous programs fund; and

(j) any other state funding provided by the legislature to support the basic elementary and secondary school system.

(12) "Total American Indian achievement gap payment" means the payment resulting from multiplying $249 for fiscal year 2026 and $256 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying $24.29 for fiscal year 2026 and $25.02 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(15) "Total future ready payment" means the payment provided in 20-9-381 resulting from adding:

(a) (i) for a high school district or K-12 school district, the product of 10% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 1 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 10% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(a)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(b) (i) for a high school district or K-12 school district, the product of 20% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 2 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 20% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(b)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(c) (i) for a high school district or K-12 school district, the product of 30% of the high school maximum per-ANB payment under this section for every graduate of the district in the school year 2 years prior who achieved the future ready level 3 goal as provided in 20-9-381; and

(ii) for an elementary school district or K-12 school district, the product of 30% of the elementary school maximum per-ANB payment under this section for every graduate counted under subsection (15)(c)(i) who was included in the district's spring enrollment count in the graduate's 8th grade year.

(16) "Total Indian education for all payment" means the payment resulting from multiplying $25.37 for fiscal year 2026 and $26.13 for each succeeding fiscal year times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(17) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of $8,317 for fiscal year 2026 and $8,567 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of $6,496 for fiscal year 2026 and $6,691 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of $6,496 for fiscal year 2026 and $6,691 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $8,317 for fiscal year 2026 and $8,567 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(18) (a) "Total quality educator and qualified staff payment" means the payment resulting from multiplying $3,783 for fiscal year 2026 and $3,896 for each succeeding fiscal year by the number of full-time equivalent quality educators and qualified staff as provided in 20-9-327, or

as provided in 20-9-324, for an educational entity meeting the legislative goal for competitive base pay of teachers, by two times the number of full-time equivalent quality educators and qualified staff as provided in 20-9-327.

(b) If an educational entity qualifies for enhanced quality educator and qualified staff payments under 20-9-324 in a fiscal year, the entity retains that qualification in subsequent years unless the district fails to qualify for 2 consecutive years. After 2 consecutive years of failure to qualify, an educational entity must reestablish eligibility before the enhanced quality educator and qualified staff payments under 20-9-324 resume for the educational entity.

(c) For a school district qualifying for the shared resource incentive under 20-9-383, the district must receive additions to the total quality educator and qualified staff payment as described in 20-9-383.

(d) The total quality educator and qualified staff payment for a district meeting the legislative goal for countywide resource sharing under 20-3-363 must have its total quality educator and qualified staff payment under subsection (18)(a) of this section increased by 50% as described in 20-3-363.

(19) "Total special education allocation" means the state payment distributed pursuant to 20-9-321 that is the greater of the amount resulting from multiplying $311.63 for fiscal year 2026 and $320.98 for each succeeding fiscal year by the statewide current year ANB or the amount of the previous year's total special education allocation.

History: En. Sec. 1, Ch. 633, L. 1993; amd. Sec. 1, Ch. 38, Sp. L. November 1993; amd. Secs. 1, 2, Ch. 437, L. 1997; amd. Sec. 1, Ch. 211, L. 1999; amd. Sec. 8, Ch. 11, Sp. L. May 2000; amd. Secs. 1, 2, Ch. 231, L. 2001; amd. Secs. 1, 2, Ch. 556, L. 2001; amd. Secs. 2, 3, Ch. 550, L. 2003; amd. Secs. 10, 11, Ch. 462, L. 2005; amd. Sec. 7, Ch. 4, Sp. L. December 2005; amd. Sec. 12, Ch. 1, Sp. L. May 2007; amd. Sec. 14, Ch. 486, L. 2009; amd. Sec. 26, Ch. 418, L. 2011; amd. Sec. 6, Ch. 400, L. 2013; amd. Sec. 1, Ch. 8, L. 2015; amd. Sec. 1, Ch. 60, L. 2015; amd. Sec. 1, Ch. 47, L. 2017; amd. Sec. 12, Ch. 275, L. 2017; amd. Sec. 5, Ch. 336, L. 2017; amd. Sec. 1, Ch. 24, L. 2019; amd. Sec. 1, Ch. 23, L. 2021; amd. Sec. 2, Ch. 60, L. 2021; amd. Sec. 1, Ch. 470, L. 2021; amd. Sec. 1, Ch. 31, L. 2023; amd. Sec. 6, Ch. 640, L. 2023; amd. Sec. 1, Ch. 38, L. 2025; amd. Sec. 27, Ch. 424, L. 2025; amd. Sec. 9, Ch. 482, L. 2025; amd. Sec. 2, Ch. 492, L. 2025; amd. Sec. 2, Ch. 658, L. 2025; amd. Sec. 8, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 1, Ch. 38, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 27, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 9, Ch. 482, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 492, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 658, L. 2025. Amendment effective May 13, 2025.

The amendment to this section made by sec. 14, Ch. 424, L. 2025, was replaced by sec. 27, Ch. 424, L. 2025, a coordination section.

Applicability: Section 3, Ch. 38, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Name Change — Directions to Code Commissioner: Pursuant to sec. 8, Ch. 739, L. 2025, in this section the Code Commissioner changed "quality educator" to "quality educator and qualified staff".

20-9-307. Repealed. Sec. 6, Ch. 208, L. 2005.

History: En. Sec. 2, Ch. 633, L. 1993; amd. Sec. 9, Ch. 343, L. 1999.

20-9-308. *(Temporary)* **BASE budgets and general fund budget limits.** (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the greater of:

(a) the current year maximum general fund budget; or

(b) the previous year's general fund budget plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141.

20-9-308. *(Effective July 1, 2026)* **BASE budgets and general fund budget limits.** (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the greater of:

(a) the current year maximum general fund budget; or

(b) the previous year's general fund budget plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) the countywide levy for BASE funding support under 20-9-362.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141.

History: **En. Sec. 3, Ch. 633, L. 1993; amd. Sec. 2, Ch. 38, Sp. L. November 1993; amd. Secs. 6, 10(2), Ch. 514, L. 1999; amd. Sec. 1, Ch. 146, L. 2001; amd. Sec. 15, Ch. 237, L. 2001; amd. Sec. 1, Ch. 190, L. 2005; amd. Sec. 12, Ch. 462, L. 2005; amd. Sec. 2, Ch. 173, L. 2007; amd. Sec. 16, Ch. 418, L. 2011; amd. Sec. 7, Ch. 400, L. 2013; amd. Sec. 2, Ch. 128, L. 2019; amd. Sec. 4, Ch. 240, L. 2023; amd. Sec. 15, Ch. 424, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 15, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review. (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a "basic system of free quality public elementary and secondary schools" means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);

(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

(a) the number of students in a district;

(b) the needs of isolated schools with low population density;

(c) the needs of urban schools with high population density;

(d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;

(e) the needs of American Indian students; and

(f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) The legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years, the legislature shall form the school funding interim commission pursuant to 5-20-301 for the purpose of reassessing the state's school funding formula.

History: En. Sec. 2, Ch. 208, L. 2005; amd. Sec. 2, Ch. 359, L. 2015.

Cross-References

School funding interim commission, 5-20-301.

20-9-310. *(Temporary)* **Oil and natural gas production taxes for school districts — allocation and limits.** (1) Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) Except as provided by 15-36-332(9), the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the guarantee account provided for in 20-9-622.

(4) (a) Subject to the limitation in subsection (1) and the conditions in subsection (4)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (4)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (4)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (4)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (4)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than $1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of $1 million or more and was eligible for a significant enrollment increase payment pursuant to 20-9-166 in the fiscal year immediately preceding the fiscal year to which the provisions of this subsection (4) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(5) (a) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district that was eligible for a significant enrollment increase payment pursuant to 20-9-166. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the fiscal year immediately following the fiscal year in which the district was eligible and must be calculated by multiplying $45,000 times each additional ANB used to calculate the significant enrollment increase payment pursuant to 20-9-166, including the absorption factor reduction.

(b) For a district in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget in the district's most recent operating year, determined in accordance with 20-9-308.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

20-9-310. *(Effective July 1, 2026)* **Oil and natural gas production taxes for school districts — allocation and limits.** (1) Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) Except as provided by 15-36-332(9), the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the guarantee account provided for in 20-9-622.

(4) Subject to the limitation in subsection (1), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(5) (a) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district that was eligible for a significant enrollment increase payment pursuant to 20-9-166. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the fiscal year immediately following the fiscal year in which the district was eligible and must be calculated by multiplying $45,000 times each additional ANB used to calculate the significant enrollment increase payment pursuant to 20-9-166, including the absorption factor reduction.

(b) For a district in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget in the district's most recent operating year, determined in accordance with 20-9-308.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

History: En. Sec. 8, Ch. 418, L. 2011; amd. Secs. 8, 9, Ch. 400, L. 2013; amd. Sec. 2, Ch. 432, L. 2015; amd. Sec. 2, Ch. 433, L. 2015; amd. Sec. 9, Ch. 173, L. 2017; amd. Sec. 6, Ch. 336, L. 2017; amd. Sec. 1, Ch. 27, L. 2021; amd. Sec. 5, Ch. 240, L. 2023; amd. Sec. 16, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 16, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-311. Calculation of ANB — 3-year averaging. (1) Average number belonging must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) (i) Except as provided in subsection (4)(e)(ii), a pupil who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes. When a pupil is concurrently enrolled in more than one district, any fractional enrollment under subsection (4)(a) must be attributed first to a pupil's nonresident district.

(ii) A pupil who participates in a jumpstart program under Title 20, chapter 7, part 18, may be counted as up to 1¼ enrollment for ANB purposes. A district providing a jumpstart program shall add one-quarter enrollment for a pupil who participated in the district's jumpstart program to the pupil's regular enrollment count under this subsection (4) in both the October and February enrollment counts following the student's participation in the jumpstart program.

(5) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(6) (a) (i) The enrollment of preschool pupils in preschool programs created at the discretion of trustees as provided in 20-7-117 may not be included in the ANB calculations.

(ii) Preschool children with disabilities receiving special education services as required under 20-7-411(3) may be included in ANB calculations based on the aggregate hours of pupil instruction as provided in subsection (4) of this section.

(b) Except as provided in subsection (6)(c), a pupil who has reached 19 years of age by September 10 of the school year may not be included in the ANB calculations.

(c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by September 10 of the school year and who is receiving special education services from a school district pursuant to 20-7-411(4)(a) may be included in the ANB calculations if:

(i) the student has not graduated;

(ii) the student is eligible for special education services and is likely to be eligible for adult services for individuals with developmental disabilities due to the significance of the student's disability; and

(iii) the student's individualized education program has identified transition goals that focus on preparation for living and working in the community following high school graduation since age 16 or the student's disability has increased in significance after age 16.

(d) A school district providing special education services pursuant to subsection (6)(c) is encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in meeting the goals of a student's transition plan.

(7) The ANB of the regularly enrolled pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except that:

(a) the ANB is calculated as a separate budget unit when:

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when geographic barriers exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts reorganize or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the reorganization or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) when a school has been designated as nonaccredited by the board of public education because of failure to meet the board of public education's assurance and performance standards, the regularly enrolled pupils attending the nonaccredited school are not eligible for ANB calculation purposes, nor will an ANB for the nonaccredited school be used in determining the BASE funding program for the district.

(8) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(9) (a) Except as provided in subsections (9)(b) and (9)(c), enrollment in a basic education program provided by the district through any combination of in-person or remote instruction may be included for ANB purposes only if the pupil is offered access to the complete range of

educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (9) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(10) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school or an offsite instructional setting of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using remote delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs. The pupil:

(i) must meet the residency requirements for that district as provided in 1-1-215;

(ii) shall live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) must be enrolled in the educational program or course under a mandatory attendance agreement as provided in 20-5-321; or

(iv) must be receiving remote instruction under 20-7-118(1)(c).

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(11) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(12) (a) A district may, for ANB purposes, include in the October and February enrollment counts an individual who is otherwise eligible under this title and who during the prior school year:

(i) resided in the district;

(ii) was not enrolled in the district or was not enrolled full time; and

(iii) completed an extracurricular activity with a duration of at least 6 weeks.

(b) (i) Except as provided in subsection (12)(b)(ii), each completed extracurricular activity under subsection (12)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (12) the individual may not be counted as more than one full-time enrollment for ANB purposes.

(ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-eighth enrollment.

(c) For the purposes of this section, "extracurricular activity" means:

(i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic activities, contests, and tournaments;

(ii) an approved career and technical student organization, pursuant to 20-7-306; or

(iii) a school theater production.

(13) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (13)(a) and then combined.

(14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (14)(a) by three.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979; amd. Sec. 1, Ch. 498, L. 1987; amd. Sec. 6, Ch. 337, L. 1989; amd. Sec. 27, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 250, L. 1991; amd. Secs. 20, 33, Ch. 633, L. 1993; amd. Sec. 1, Ch. 212, L. 1997; amd. Sec. 7, Ch. 430, L. 1997; amd. Sec. 10, Ch. 343, L. 1999; amd. Sec. 1, Ch. 252, L. 2001; amd. Sec. 11, Ch. 138, L. 2005; amd. Sec. 3, Ch. 215, L. 2005; amd. Sec. 13, Ch. 462, L. 2005; amd. Sec. 11, Ch. 510, L. 2005; amd. Sec. 8, Ch. 4, Sp. L. December 2005; amd. Sec. 13, Ch. 1, Sp. L. May 2007; amd. Sec. 2, Ch. 137, L. 2009; amd. Sec. 10, Ch. 400, L. 2013; amd. Sec. 1, Ch. 157, L. 2015; amd. Sec. 2, Ch. 18, L. 2021; amd. Sec. 1, Ch. 269, L. 2021; amd. Sec. 2, Ch. 406, L. 2021; amd. Sec. 5, Ch. 580, L. 2023; amd. Sec. 7, Ch. 608, L. 2023; amd. Sec. 5, Ch. 96, L. 2025; amd. Sec. 2, Ch. 162, L. 2025; amd. Sec. 8, Ch. 439, L. 2025; amd. Sec. 14, Ch. 466, L. 2025; amd. Sec. 2, Ch. 672, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 96, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 162, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 439, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 14, Ch. 466, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 672, L. 2025. Amendment effective July 1, 2025.

Applicability — Retroactive Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

Section 4, Ch. 162, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to early literacy jumpstart programs conducted following the end of the school calendar year ending in 2025."

Section 4, Ch. 672, L. 2025, provided: "[This act] applies to enrollment counts and ANB calculations conducted in school fiscal years beginning on or after July 1, 2025."

Cross-References

School fiscal year, 20-1-301.

Religious instruction released time program — academic credit, 20-1-308.

Preschool program to be included in calculation of ANB, 20-7-117.

20-9-312. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979; amd. Sec. 28, Ch. 11, Sp. L. June 1989.

20-9-313. Circumstances under which regular ANB may be increased. The average number belonging of a budget unit of a school district, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. An increase in the average number belonging for the appropriate budget unit resulting from the opening or reopening of the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. An increase in the average number

belonging for the appropriate budget unit must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging for the appropriate budget unit must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979; amd. Sec. 2, Ch. 148, L. 1981; amd. Sec. 7, Ch. 337, L. 1989; amd. Sec. 6, Ch. 466, L. 1993; amd. Sec. 11, Ch. 343, L. 1999; amd. Sec. 14, Ch. 1, Sp. L. May 2007; amd. Sec. 6, Ch. 240, L. 2023; amd. Sec. 6, Ch. 96, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 96, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 8, Ch. 96, L. 2025, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2025."

20-9-314. Repealed. Sec. 8, Ch. 240, L. 2023.

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979; amd. Sec. 1, Ch. 203, L. 1981; amd. Sec. 8, Ch. 337, L. 1989; amd. Sec. 10, Ch. 555, L. 1991; amd. Sec. 21, Ch. 633, L. 1993; amd. Sec. 37, Ch. 18, L. 1995; amd. Sec. 19, Ch. 22, L. 1997; amd. Sec. 16, Ch. 237, L. 2001; amd. Sec. 14, Ch. 462, L. 2005; amd. Sec. 15, Ch. 1, Sp. L. May 2007; amd. Sec. 11, Ch. 400, L. 2013; amd. Sec. 1, Ch. 259, L. 2017; amd. Sec. 3, Ch. 128, L. 2019; amd. Sec. 1, Ch. 107, L. 2021; amd. Sec. 4, Ch. 551, L. 2021.

20-9-315. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979; amd. Sec. 29, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 767, L. 1991.

20-9-316. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979; amd. Sec. 1, Ch. 75, L. 1981; amd. Secs. 2, 5, Ch. 475, L. 1983; amd. Sec. 1, Ch. 629, L. 1983; amd. Sec. 1, Ch. 738, L. 1985; amd. Sec. 1, Ch. 4, Sp. L. June 1989.

20-9-317. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979; amd. Sec. 2, Ch. 75, L. 1981; amd. Sec. 2, Ch. 629, L. 1983; amd. Sec. 2, Ch. 738, L. 1985; amd. Sec. 2, Ch. 4, Sp. L. June 1989.

20-9-318. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3, 5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986; amd. Sec. 3, Ch. 666, L. 1987; amd. Sec. 30, Ch. 11, Sp. L. June 1989.

20-9-319. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch. 75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986; amd. Sec. 4, Ch. 666, L. 1987; amd. Sec. 31, Ch. 11, Sp. L. June 1989.

20-9-320. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19); amd. Sec. 32, Ch. 11, Sp. L. June 1989.

20-9-321. Allowable cost payment for special education. (1) As used in this section, "ANB" means the current year ANB.

(2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district or special education cooperative using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

(4) (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives for administration and travel.

(b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives must be awarded to the cooperatives.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

(6) A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22); amd. Sec. 1, Ch. 315, L. 1983; amd. Sec. 33, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 249, L. 1991; amd. Sec. 27, Ch. 767, L. 1991; amd. Secs. 22, 23, Ch. 633, L. 1993; amd. Sec. 2, Ch. 145, L. 2001; amd. Sec. 15, Ch. 462, L. 2005; amd. Sec. 9, Ch. 4, Sp. L. December 2005; amd. Sec. 4, Ch. 9, L. 2019.

20-9-322. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 1, Ch. 475, L. 1983; amd. Sec. 9, Ch. 337, L. 1989; amd. Sec. 34, Ch. 11, Sp. L. June 1989.

20-9-323. Repealed. Sec. 1, Ch. 106, L. 2021; sec. 138, Ch. 261, L. 2021.

History: En. Sec. 22, Ch. 418, L. 2011; amd. Sec. 12, Ch. 400, L. 2013.

20-9-324. Incentives for educational entities meeting legislative goal for competitive base pay of teachers — definitions. (1) An educational entity eligible for a quality educator and qualified staff payment under 20-9-327 must receive an enhanced quality educator and qualified staff payment for all quality educators and qualified staff, calculated as provided in 20-9-306, if it meets the legislative goal for competitive base pay of teachers in subsection (2).

(2) The legislative goal for competitive base pay of teachers is a teacher base pay in an educational entity that in the applicable year:

(a) is equal to at least 11 times the quality educator and qualified staff payment amount provided in 20-9-306; and

(b) is not less than the following percentages of the teacher average pay in the prior fiscal year in the educational entity:

(i) in fiscal year 2026, not less than 62%;

(ii) in fiscal year 2027, not less than 64%;

(iii) in fiscal year 2028, not less than 66%;

(iv) in fiscal year 2029, not less than 68%; and

(v) in fiscal year 2030 and succeeding fiscal years, not less than 70%.

(3) An educational entity seeking an incentive for the subsequent school fiscal year under this section shall, by December 1, provide the data necessary, as determined by the superintendent of public instruction, to verify that the educational entity has met the legislative goal established in subsection (2) for the current year.

(4) For the purposes of this section, the following definitions apply:

(a) "Educational entity" means:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) correctional facilities, as defined in 41-5-103; and

(v) the Montana youth challenge program.

(b) "Full-time equivalent teacher" means a teacher who is contracted for employment for the entire academic year, fulfilling professional responsibilities throughout all periods of the day when the educational entity offers instruction. This includes time spent preparing for classes, delivering instruction, mentoring others, and performing other duties set forth in the teacher's job description or individual contract or in the collective bargaining agreement governing the teacher's employment.

(c) "Teacher" means an individual who:

(i) holds a current class 1, 2, 4, 5, 6, or 7 license issued by the office of public instruction under rules adopted by the board of public education pursuant to 20-4-102; and

(ii) is employed by an educational entity in an instructional position requiring teacher licensure.

(d) "Teacher average pay" means the total compensation paid by an educational entity to all of its teachers, not including bonuses, stipends, or extended duty contracts, divided by the total full-time equivalent teachers employed by the entity.

(e) "Teacher base pay" means the lowest salary for a full-time equivalent beginning teacher for the current year as incorporated in the educational entity's collective bargaining agreement or a memorandum of understanding executed between the entity and the applicable union if the teachers' employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, or incorporated in the entity's policy if the teachers' employment is not covered by a collective bargaining agreement, not including bonuses, stipends, or extended duty contracts.

History: En. Sec. 1, Ch. 60, L. 2021; amd. Sec. 1, Ch. 515, L. 2023; amd. Sec. 10, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 10, Ch. 482, L. 2025. Amendment effective May 8, 2025.

The amendment to this section made by sec. 5, Ch. 671, L. 2025, was rendered void by sec. 7, Ch. 671, L. 2025, a coordination section.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-9-325. Data-for-achievement payment. (1) The state shall provide a data-for-achievement payment to public school districts as defined in 20-6-101 and 20-6-701. The data-for-achievement payment is calculated as provided in 20-9-306.

(2) Funds received for the data-for-achievement payment must be used by a school district to pay for access fees or other costs associated with use of or participation in the statewide data system administered by the office of public instruction or a comparable data system provided by a private vendor, including data entry and staff training on use of the systems.

(3) Unless funds are otherwise appropriated at higher amounts by the legislature, the office of public instruction may spend no more than $500,000 per biennium for the purposes of mediating with vendors, developing a plan, preparing a request for proposal solicitation package, managing the vendor contract, and implementing a plan with school districts for the statewide data system. This limitation does not apply if the office of public instruction develops and administers the statewide data system without a vendor.

History: En. Sec. 2, Ch. 400, L. 2013; amd. Sec. 2, Ch. 60, L. 2015.

20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements — reporting. (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements, the data-for-achievement payment, the per-ANB amount used to calculate the total special education allocation in 20-9-306, and the general fund payments in 20-9-327 through 20-9-330 in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) (a) The present law base for the entitlements referenced in subsection (1) of this section, calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(b) This subsection (2) does not limit the superintendent or the governor from recommending, or limit the legislature from adopting, inflationary adjustments other than those calculated in this section.

(3) Beginning in fiscal year 2026 and then every even-numbered fiscal year thereafter, the superintendent of public instruction shall provide a report no later than September 1 to the education interim budget committee and the education interim committee and no later than December 31 to the legislative finance committee, in accordance with 5-11-210, regarding the educational relevance in the implementation of this section. The report must include:

(a) the increase in funding over the prior year on a per-ANB basis for the BASE aid elements represented in [20-9-306(2)(a), (2)(c) through (2)(g), and (2)(i)] budgeted to be provided to school districts in the current fiscal year and provided to school districts in the preceding

5 fiscal years, which must be reported in both dollar and percentage amounts, with the six percentages rounded to the nearest one hundredth;

(b) the percentage change from July of the preceding year to July of the applicable year in the consumer price index for the current year and the preceding 5 years, with the six percentages rounded to the nearest one hundredth; and

(c) a cumulative numerical comparison of the difference between the percentages reported in subsections (3)(a) and (3)(b), rounded to the nearest one hundredth.

(4) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

History: **En. Sec. 1, Ch. 550, L. 2003; amd. Sec. 13, Ch. 400, L. 2013; amd. Sec. 2, Ch. 470, L. 2021; amd. Sec. 1, Ch. 244, L. 2025.**

Compiler's Comments

2025 Amendment — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 1, Ch. 244, L. 2025. Amendment effective July 1, 2025.

In (3)(a) the Code Commissioner substituted "20-9-306(2)(a), (2)(c) through (2)(g), and (2)(i)" for "20-9-306(2)(a) and (2)(c) through (2)(h)" to reflect the renumbering of former 20-9-306(2)(h) to 20-9-306(2)(i) by Ch. 482, L. 2025. On July 1, 2026, the Code Commissioner will substitute "20-9-306(2)(a) through (2)(f) and (2)(h)" for "20-9-306(2)(a), (2)(c) through (2)(g), and (2)(i)" to reflect the deletion of former 20-9-306(2)(b) effective July 1, 2026, by Ch. 424, L. 2025.

20-9-327. Quality educator and qualified staff payment. (1) (a) The state shall provide a quality educator and qualified staff payment as calculated in 20-9-306 to the following educational entities:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) correctional facilities, as defined in 41-5-103; and

(v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator and qualified staff payment for special education cooperatives must be distributed directly to special education cooperatives by the superintendent of public instruction.

(b) The quality educator and qualified staff payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator and qualified staff payment for Pine Hills correctional facility and the facility under contract with the department of corrections for female, as defined in 1-1-201, youth must be distributed to those facilities by the department of corrections.

(d) The quality educator and qualified staff payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) (a) The number of quality educators is the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an educational entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(ii) holds an American Indian language and culture specialist license and is employed by an entity listed in subsection (1) to provide instruction in American Indian language and culture.

(b) The number of qualified staff is the number of full-time equivalent staff, each of whom is employed by:

(i) an educational entity listed in subsection (1) to provide services to students as a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-24-301, 37-25-309, 37-39-308, 37-39-309, or 37-39-311;

(ii) an educational entity listed in subsection (1) and has been issued an emergency authorization of employment under 20-4-111 for that entity for no more than 3 school years;

(iii) a public school district, as defined in 20-6-101 and 20-6-701, as clerk of the district and performs the functions described in 20-3-325(3);

(iv) an educational entity listed in subsection (1) as an advanced opportunity facilitator; or

(v) an educational entity listed in subsection (1) to provide educational sign language interpreting for deaf and hard-of-hearing students and meets the qualifications for educational sign language interpreting established by the board of public education.

History: En. Sec. 1, Ch. 4, Sp. L. December 2005; amd. Sec. 8, Ch. 94, L. 2007; amd. Sec. 1, Ch. 354, L. 2007; amd. Sec. 16, Ch. 1, Sp. L. May 2007; amd. Sec. 5, Ch. 442, L. 2015; amd. Sec. 3, Ch. 344, L. 2019; amd. Sec. 4, Ch. 339, L. 2021; amd. Sec. 9, Ch. 685, L. 2023; amd. Sec. 16, Ch. 713, L. 2023; amd. Sec. 11, Ch. 482, L. 2025; amd. Sec. 3, Ch. 536, L. 2025; amd. Sec. 4, Ch. 594, L. 2025; amd. Sec. 7, Ch. 671, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 11, Ch. 482, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 536, L. 2025. Amendment effective October 1, 2025.

Subsection (3)(b)(iv) was inserted by sec. 4, Ch. 594, L. 2025, a coordination section. Amendment effective May 12, 2025.

Subsection (3)(b)(v) was inserted by sec. 7, Ch. 671, L. 2025, a coordination section. Amendment effective May 13, 2025.

The amendment to this section made by sec. 3, Ch. 594, L. 2025, was rendered void by sec. 4, Ch. 594, L. 2025, a coordination section.

The amendment to this section made by sec. 6, Ch. 671, L. 2025, was rendered void by sec. 7, Ch. 671, L. 2025, a coordination section.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-9-328. At-risk student payment. (1) The state shall provide an at-risk student payment to public school districts, as defined in 20-6-101 and 20-6-701, for at-risk students, as defined in 20-1-101 and referred to in 20-9-309.

(2) The at-risk student payment must be distributed to public school districts by the office of public instruction in the same manner that the office of public instruction allocates the funds received under 20 U.S.C. 6332, et seq. The office of public instruction shall prorate payments to districts based upon the available appropriation.

(3) The office of public instruction shall report to the governor and the legislature in accordance with 5-11-210 on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students.

History: En. Sec. 2, Ch. 4, Sp. L. December 2005; amd. Sec. 2, Ch. 118, L. 2013; amd. Sec. 54, Ch. 261, L. 2021.

20-9-329. Indian education for all payment. (1) Except as provided in subsection (5), the state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is calculated as provided in 20-9-306 and is a component of the BASE budget of the district.

(3) The district shall deposit the payment in the general fund of the district.

(4) (a) A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development of an American Indian studies program, providing curriculum and materials to students for the program, and providing training to teachers about the program's curriculum and materials.

(b) A public school district shall file an annual report with the office of public instruction, in a form and by a date prescribed by the superintendent of public instruction, that specifies how the Indian education for all funds were expended in the prior school fiscal year in sufficient detail to ensure that all the funds were properly spent for the purposes under subsection (4)(a) In addition to the expenditure reporting, the report must include detailed descriptions of:

(i) the instruction provided to certified personnel and students as required under 20-1-503; and

(ii) how this instruction was developed cooperatively with the advice and assistance of Montana tribes pursuant to Title 20, chapter 1, part 5.

(5) (a) If a school district fails to file the annual report required under subsection (4), the office of public instruction shall reduce the school district's BASE and maximum budget limits and BASE aid funding by the full amount of the Indian education for all payment for subsequent school fiscal years until the report is filed.

(b) If a school district files a report failing to show that all funds received under this section were spent for the purposes of subsection (4)(a), the office of public instruction shall reduce the school district's BASE and maximum budget limits and BASE aid funding under this section for the subsequent fiscal year by the amount of funding received that was not spent for the purposes of subsection (4)(a).

(6) (a) The office of public instruction shall publish an annual report on the office's website listing any school districts that fail to report or satisfactorily report under subsection (4) of this section.

(b) When a school district fails to report or satisfactorily report under subsection (4) of this section, this failure must be noted in the school accreditation status reports established by the board of public education pursuant to 20-7-102.

History: **En. Sec. 3, Ch. 4, Sp. L. December 2005; amd. Sec. 17, Ch. 1, Sp. L. May 2007; amd. Sec. 4, Ch. 718, L. 2023; amd. Sec. 5, Ch. 557, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 557, L. 2025. Amendment effective July 1, 2025.

20-9-330. American Indian achievement gap payment. (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is calculated as provided in 20-9-306, using the number of American Indian students enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

(4) The office of public instruction shall report to the governor and the legislature in accordance with 5-11-210 on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students.

History: **En. Sec. 4, Ch. 4, Sp. L. December 2005; amd. Sec. 18, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 118, L. 2013; amd. Sec. 55, Ch. 261, L. 2021.**

20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the school equalization and property tax reduction account established in 20-9-336 in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the school equalization and property tax reduction account established in 20-9-336 immediately on occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) (a) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be deposited in the school equalization and property tax reduction account established in 20-9-336 and be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335:

(i) the portion of the federal Taylor Grazing Act funds designated for the elementary county equalization fund under the provisions of 17-3-222;

(ii) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(iii) all money paid into the county treasury as a result of fines for violations of law under the provisions of 20-9-332, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(iv) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(v) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) gross proceeds taxes from coal under 15-23-703.

(b) In accordance with 20-9-212(1), the county treasurer shall keep a separate accounting of the revenue provided for in subsection (2)(a).

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987; amd. Secs. 35, 84, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 267, L. 1991; amd. Sec. 4, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 17, Ch. 9, Sp. L. November 1993; amd. Sec. 41, Ch. 451, L. 1995; amd. Sec. 33, Ch. 509, L. 1995; amd. Sec. 3, Ch. 580, L. 1995; amd. Sec. 20, Ch. 22, L. 1997; amd. Sec. 10, Ch. 496, L. 1997; amd. Sec. 15, Ch. 515, L. 1999; amd. Sec. 11, Ch. 554, L. 1999; amd. Sec. 111, Ch. 584, L. 1999; amd. Sec. 6, Ch. 191, L. 2001; amd. Sec. 10, Ch. 257, L. 2001; amd. Sec. 119, Ch. 574, L. 2001; amd. Sec. 5, Ch. 41, L. 2003; amd. Sec. 17, Ch. 542, L. 2005; amd. Sec. 2, Ch. 772, L. 2023; amd. Sec. 3, Ch. 94, L. 2025; amd. Sec. 3, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 94, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.

20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title, except those collected by a justice's court, must be paid into the elementary county equalization fund as provided by 20-9-331(2)(a)(iii). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report must be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302; amd. Sec. 3, Ch. 413, L. 1983; amd. Sec. 16, Ch. 557, L. 1987; amd. Sec. 21, Ch. 22, L. 1997; amd. Sec. 4, Ch. 94, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 94, L. 2025. Amendment effective July 1, 2025.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.

Penalty for violation of school laws, 20-1-207.

20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the school equalization and property tax reduction account established in 20-9-336 in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the school equalization and property tax reduction account established in 20-9-336 immediately on occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) (a) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be deposited in the school equalization and property tax reduction account established in 20-9-336 and be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335:

(i) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(ii) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213; and

(iii) gross proceeds taxes from coal under 15-23-703.

(b) In accordance with 20-9-212(1), the county treasurer shall keep a separate accounting of the revenue provided for in subsection (2)(a).

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987; amd. Secs. 36, 85, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 267, L. 1991; amd. Sec. 5, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 18, Ch. 9, Sp. L. November 1993; amd. Sec. 42, Ch. 451, L. 1995; amd. Sec. 34, Ch. 509, L. 1995; amd. Sec. 4, Ch. 580, L. 1995; amd. Sec. 22, Ch. 22, L. 1997; amd. Sec. 11, Ch. 496, L. 1997; amd. Sec. 16, Ch. 515, L. 1999; amd. Sec. 12, Ch. 554, L. 1999; amd. Sec. 112, Ch. 584, L. 1999; amd. Sec. 7, Ch. 191, L. 2001; amd. Sec. 11, Ch. 257, L. 2001; amd. Sec. 120, Ch. 574, L. 2001; amd. Sec. 18, Ch. 542, L. 2005; amd. Sec. 3, Ch. 772, L. 2023; amd. Sec. 5, Ch. 94, L. 2025; amd. Sec. 4, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 94, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-334. Repealed. Sec. 9, Ch. 464, L. 2001.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914; amd. Sec. 3, Ch. 552, L. 1985; amd. Sec. 6, Ch. 711, L. 1991; amd. Sec. 8, Ch. 765, L. 1991; amd. Sec. 6, Ch. 6, Sp. L. July 1992; amd. Sec. 23, Ch. 22, L. 1997.

20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915; amd. Sec. 4, Ch. 413, L. 1983; amd. Sec. 4, Ch. 299, L. 1985; amd. Sec. 7, Ch. 6, Sp. L. July 1992; amd. Sec. 47, Ch. 633, L. 1993; amd. Sec. 24, Ch. 22, L. 1997; amd. Sec. 7, Ch. 464, L. 2001; amd. Sec. 6, Ch. 463, L. 2005.

20-9-336. *(Temporary)* **School equalization and property tax reduction account — uses.** (1) There is a school equalization and property tax reduction account in the state special revenue fund. Contingent on appropriation by the legislature, money in the account is for distribution to school districts as the second source of funding for state equalization aid as provided in 20-9-343. At fiscal yearend, any fund balance in the account exceeding what was appropriated must be transferred to the guarantee account established in 20-9-622.

(2) The account receives revenue as described in 20-9-331, 20-9-333, and 20-9-360.

(3) (a) Beginning in fiscal year 2027, each December the superintendent of public instruction shall forecast the amount of revenue the account will receive in that fiscal year by dividing the sum of the taxable value of all property in the state reported by the department of revenue pursuant to 20-9-369 by 1,000 to determine a statewide value mill and then multiplying that amount by the total number of mills specified in 20-9-331, 20-9-333, and 20-9-360.

(b) If the forecasted amount in subsection (3)(a) differs from the amount determined through the same calculation in the prior fiscal year and is less by an amount greater than $2 million, then the superintendent shall:

(i) decrease the multiplier used to calculate the statewide elementary and high school guaranteed tax base ratios used for funding BASE budgets under 20-9-366 to the nearest whole number determined by the superintendent to result in a decrease in the amount of guaranteed tax base aid distributed to eligible school districts equal to 85% of the decrease in the calculated amount between the 2 years; and

(ii) decrease the multiplier used to calculate the statewide elementary and high school mill value per ANB for school retirement guaranteed tax base purposes under 20-9-366 to the nearest whole number determined by the superintendent to result in a decrease in the amount of retirement guaranteed tax base aid distributed to eligible counties equal to 15% of the decrease in the calculated amount between the 2 years.

(c) If the forecasted amount in subsection (3)(a) is greater than the amount determined through the same calculation in the prior fiscal year, the superintendent, using an amount equal to 50% of the forecasted revenue growth up to revenue growth of 105% of the prior fiscal year revenue plus all forecasted revenue growth above 105% of the prior fiscal year revenue, shall:

(i) first increase the multiplier used to calculate statewide mill value per elementary and high school ANB for retirement purposes under 20-9-366, not to exceed 305%, to the nearest whole number determined by the superintendent to result in an increase in the amount of guaranteed tax base aid distributed to eligible counties as close as mathematically possible to the excess amount determined in subsection (3)(c); and

(ii) if there is an excess amount remaining after the 305% cap is hit under subsection (3)(c)(i), then:

(A) the superintendent shall increase the percentages of the basic and per-ANB entitlements in 20-9-306[(2)(b) and] (3)(a) by whole numbers not to exceed 45.3% and 90% respectively, then the multiplier used to calculate the statewide elementary and high school guaranteed tax base ratios used for funding BASE budgets under 20-9-366 by whole numbers in a manner determined by the superintendent to result in an increase in the amount of guaranteed tax base aid distributed to eligible districts as close as mathematically possible to the excess amount remaining without an increase in the amount of BASE property taxes on a statewide basis; and

(B) in making the calculations under subsection (3)(c)(ii)(A) and in calculating the guaranteed tax base aid ratios under 20-9-366 for the ensuing school fiscal year, the superintendent shall utilize a GTBA budget area for the prior year based on the adjusted percentages of the basic and per-ANB entitlements.

(4) (a) The adjustments to the multipliers and percentages under subsection (3) are applicable to state equalization aid distributions in the fiscal year following the adjustment.

(b) Adjustments to the multipliers and percentages made under subsection (3) remain in effect in subsequent years unless further changed under 20-9-366 or subsection (3) of this section or as otherwise provided by law.

20-9-336. *(Effective July 1, 2026)* **School equalization and property tax reduction account — uses.** (1) There is a school equalization and property tax reduction account in the state special revenue fund. Contingent on appropriation by the legislature, money in the account is for distribution to school districts as the second source of funding for state equalization aid as provided in 20-9-343. At fiscal yearend, any fund balance in the account exceeding what was appropriated must be transferred to the guarantee account established in 20-9-622.

(2) The account receives revenue as described in 20-9-331, 20-9-333, and 20-9-360.

(3) (a) Beginning in fiscal year 2027, each December the superintendent of public instruction shall forecast the amount of revenue the account will receive in that fiscal year by dividing the sum of the taxable value of all property in the state reported by the department of revenue pursuant to 20-9-369 by 1,000 to determine a statewide value mill and then multiplying that amount by the total number of mills specified in 20-9-331, 20-9-333, and 20-9-360.

(b) If the forecasted amount in subsection (3)(a) differs from the amount determined through the same calculation in the prior fiscal year and is less by an amount greater than $2 million, then the superintendent shall:

(i) decrease the multiplier used to calculate the statewide guaranteed tax base ratio for the countywide levy for BASE funding support under 20-9-366 to the nearest whole number determined by the superintendent to result in a decrease in the amount of guaranteed tax base aid distributed to eligible counties equal to 85% of the decrease in the calculated amount between the 2 years; and

(ii) decrease the multiplier used to calculate the statewide elementary and high school mill value per ANB for school retirement guaranteed tax base purposes under 20-9-366 to the nearest whole number determined by the superintendent to result in a decrease in the amount of retirement guaranteed tax base aid distributed to eligible counties equal to 15% of the decrease in the calculated amount between the 2 years.

(c) If the forecasted amount in subsection (3)(a) is greater than the amount determined through the same calculation in the prior fiscal year, the superintendent, using an amount equal to 50% of the forecasted revenue growth up to revenue growth of 105% of the prior fiscal year revenue plus all forecasted revenue growth above 105% of the prior fiscal year revenue, shall:

(i) first increase the multiplier used to calculate statewide mill value per elementary and high school ANB for retirement purposes under 20-9-366, not to exceed 305%, to the nearest whole number determined by the superintendent to result in an increase in the amount of guaranteed tax base aid distributed to eligible counties as close as mathematically possible to the excess amount determined in subsection (3)(c); and

(ii) if there is an excess amount remaining after the 305% cap is hit under subsection (3)(c)(i), then:

(A) the superintendent shall increase the percentages of the basic and per-ANB entitlements in 20-9-306 (3)(a) by whole numbers not to exceed 45.3% and 90% respectively, then the multiplier used to calculate the statewide elementary and high school guaranteed tax base ratios used for guaranteed tax base funding for the countywide levy for BASE funding support under 20-9-366 by whole numbers in a manner determined by the superintendent to result in an increase in the amount of guaranteed tax base aid distributed to eligible counties as close as mathematically possible to the excess amount remaining without an increase in the amount of countywide BASE funding levies on a statewide basis; and

(B) in making the calculations under subsection (3)(c)(ii)(A) and in calculating the guaranteed tax base aid ratios under 20-9-366 for the ensuing school fiscal year, the superintendent shall utilize a GTBA budget area for the prior year based on the adjusted percentages of the basic and per-ANB entitlements.

(4) (a) The adjustments to the multipliers and percentages under subsection (3) are applicable to state equalization aid distributions in the fiscal year following the adjustment.

(b) Adjustments to the multipliers and percentages made under subsection (3) remain in effect in subsequent years unless further changed under 20-9-366 or subsection (3) of this section or as otherwise provided by law.

History: En. Sec. 1, Ch. 772, L. 2023; amd. Sec. 28, Ch. 424, L. 2025; amd. Sec. 5, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 28, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 5, Ch. 658, L. 2025. Amendment effective May 13, 2025.

The amendment to this section made by sec. 17, Ch. 424, L. 2025, was replaced by sec. 28, Ch. 424, L. 2025, a coordination section.

In (3)(c)(ii)(A) in temporary version the Code Commissioner inserted brackets around "(2)(b) and" and in version effective July 1, 2026, deleted "(2)(b) and" to reflect that Ch. 424 deleted former 20-9-306(2)(b) effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-337 through 20-9-340 reserved.

20-9-341. Definition of interest and income money. (1) Subject to deductions made under 77-1-109, as used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund after any deductions made under 77-1-109.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907; amd. Sec. 3, Ch. 14, Sp. L. January 1992; amd. Sec. 113, Ch. 42, L. 1997; amd. Sec. 5, Ch. 122, L. 1999; amd. Sec. 4, Ch. 465, L. 2009.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

The Enabling Act, sec. 11 (see anno. vol. 1).

20-9-342. Deposit of interest and income money by state board of land commissioners. (1) Except as provided in 20-9-516, the state board of land commissioners shall deposit the interest and income money for each fiscal year into the guarantee account, provided for in 20-9-622, by the last business day of February and June before the close of the fiscal year in which the money was received. Except as provided in subsection (2), money in the guarantee account must be used for state equalization aid.

(2) Any excess interest and income revenue deposited in the guarantee account in each fiscal year must be distributed in accordance with 20-9-622(2).

(3) For purposes of this section, "excess interest and income revenue" means an annual amount in excess of $56 million.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 35, Ch. 509, L. 1995; amd. Sec. 4, Ch. 554, L. 2001; amd. Sec. 2, Ch. 10, Sp. L. August 2002; amd. Sec. 12, Ch. 377, L. 2009; amd. Sec. 1, Ch. 93, L. 2011; amd. Sec. 14, Ch. 400, L. 2013; amd. Sec. 7, Ch. 336, L. 2017.

Cross-References

Disposition of revenue and profits from state lands, 77-1-216.

20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for distribution to the public schools for guaranteed tax base aid, BASE aid, and state debt service assistance.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, and state debt service assistance.

(3) The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) subject to 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986; amd. Sec.

70, Ch. 370, L. 1987; amd. Sec. 3, Ch. 662, L. 1987; amd. Sec. 5, Ch. 666, L. 1987; amd. Sec. 37, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 622, L. 1991; amd. Secs. 1, 3, Ch. 729, L. 1991; amd. Sec. 18, Ch. 787, L. 1991; amd. Sec. 6, Ch. 375, L. 1993; amd. Sec. 8, Ch. 593, L. 1993; amd. Sec. 24, Ch. 633, L. 1993; amd. Sec. 36, Ch. 509, L. 1995; amd. Sec. 4, Ch. 517, L. 1995; amd. Sec. 17, Ch. 237, L. 2001; amd. Sec. 5, Ch. 554, L. 2001; amd. Secs. 3, 5, Ch. 10, Sp. L. August 2002; amd. Sec. 13, Ch. 377, L. 2009; amd. Sec. 4, Ch. 404, L. 2017; amd. Sec. 6, Ch. 371, L. 2021.

Cross-References

Disposal of severance taxes, 15-35-108.
Funding for special education cooperatives, 20-7-457.
Local impact and education trust fund account created, 90-6-202.

20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status because of failure to meet the board of public education's assurance and performance standards.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to November of the school fiscal year, to each district 10% of:
(i) direct state aid;
(ii) the total quality educator and qualified staff payment;
(iii) the total at-risk student payment;
(iv) the total Indian education for all payment;
(v) the total American Indian achievement gap payment; and
(vi) the total data-for-achievement payment;

(b) from January to April of the school fiscal year, to each district 10% of:
(i) direct state aid;
(ii) the total quality educator and qualified staff payment;
(iii) the total at-risk student payment;
(iv) the total Indian education for all payment;
(v) the total American Indian achievement gap payment; and
(vi) the total data-for-achievement payment;

(c) in December of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid, the total quality educator and qualified staff payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the total data-for-achievement payment.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986; amd. Sec. 4, Ch. 1, Sp. L. June 1989; amd. Sec. 38, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 622, L. 1991; amd. Sec. 28, Ch. 767, L. 1991; amd. Sec. 1, Ch. 1, Sp. L. July 1992; amd. Sec. 8, Ch. 6, Sp. L. July 1992; amd. Sec. 25, Ch. 633, L. 1993; amd. Sec. 1, Ch. 308, L. 1999; amd. Sec. 62, Ch. 114, L. 2003; amd. Sec. 10, Ch. 4, Sp. L. December 2005; amd. Sec. 15, Ch. 400, L. 2013; amd. Sec. 8, Ch. 336, L. 2017; amd. Sec. 1, Ch. 66, L. 2019; amd. Sec. 12, Ch. 482, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 482, L. 2025. Amendment effective May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-9-345. Repealed. Sec. 7, Ch. 317, L. 1981.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1; amd. Sec. 1, Ch. 540, L. 1981.

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement, general fund, and debt service fund budgets for each district that have been adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state advances and reimbursements for school facilities, limiting the distribution to no more than the amount appropriated for the school fiscal year to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining the debt service payment obligation in each district for debt service on bonds that were sold as provided in 20-9-370(3) that qualify for a state advance or reimbursement for school facilities under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid appropriated for debt service purposes, determining the state advance for school facilities and the proportionate share of state reimbursement for school facilities that each eligible district must receive for the school fiscal year; and

(c) distributing that amount by May 31 of each school fiscal year to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year;

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county for county equalization or to the county treasurer of the county where the district is located or to the investment account identified by the applicable district for BASE aid, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning, as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918; amd. Sec. 39, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 112, L. 1991; amd. Sec. 9, Ch. 6, Sp. L. July 1992; amd. Sec. 26, Ch. 349, L. 1993; amd. Sec. 26, Ch. 633, L. 1993; amd. Sec. 37, Ch. 509, L. 1995; amd. Sec. 1, Ch. 586, L. 1995; amd. Sec. 3, Ch. 205, L. 2001.

20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions. (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the elementary and high school county equalization funds as provided in 20-9-331 and 20-9-333; and

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of schools with a report of payments for special education allowable costs to districts of the county.

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919; amd. Sec. 40, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 6, Sp. L. July 1992; amd. Sec. 27, Ch. 633, L. 1993; amd. Sec. 25, Ch. 22, L. 1997; amd. Sec. 114, Ch. 42, L. 1997.

20-9-348. Estimation of state equalization aid for budget purposes. The apportionment of state equalization aid shall be the second source of revenue in calculating the financing of the elementary district BASE funding program and the high school district BASE funding program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the county superintendent shall consider that the state BASE funding program revenues and county equalization moneys, together, will be capable of financing 100% of the BASE funding program.

History: En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920; amd. Sec. 5, Ch. 299, L. 1985.

20-9-349 and 20-9-350 reserved.

20-9-351. Funding of deficiency in BASE aid. If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the guaranteed tax base aid required under 20-9-366 through 20-9-369 and BASE aid support determined under 20-9-347, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921; amd. Sec. 3, Ch. 317, L. 1981; amd. Sec. 2, Ch. 540, L. 1981; amd. Sec. 4, Ch. 15, L. 1985; amd. Sec. 6, Ch. 299, L. 1985; amd. Sec. 41, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 5, Sp. L. July 1992; amd. Sec. 28, Ch. 633, L. 1993.

Cross-References

Supplemental appropriations, 17-7-301.

20-9-352. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M 1947, 75-6922; amd. Sec. 4, Ch. 317, L. 1981; amd. Sec. 3, Ch. 540, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 418, L. 1983; amd. Sec. 4, Ch. 699, L. 1983; amd. Sec. 5, Ch. 15, L. 1985; amd. Sec. 4, Ch. 265, L. 1985; amd. Sec. 15, Ch. 695, L. 1985; amd. Sec. 18, Ch. 611, L. 1987; amd. Sec. 22, Ch. 655, L. 1987; amd. Sec. 30, Ch. 83, L. 1989; amd. Sec. 86, Ch. 11, Sp. L. June 1989.

20-9-353. Over-BASE budget levy — election for authorization to impose. (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308. If the trustees of a district are required to submit to the electors of the district a proposition to finance an increase in the over-BASE budget amount pursuant to 20-9-308, the trustees shall comply with the provisions of subsections (2) through (4) of this section.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition for an increase in the over-BASE budget levy for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any over-BASE budget levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979; amd. Sec. 5, Ch. 75, L. 1981; amd. Sec. 2, Ch. 110, L. 1985; amd. Sec. 1, Ch. 338, L. 1987; amd. Sec. 42, Ch. 11, Sp. L. June 1989; amd. Sec. 29, Ch. 767, L. 1991; amd. Sec. 29, Ch. 633, L. 1993; amd. Sec. 1, Ch. 266, L. 1995; amd. Sec. 8, Ch. 211, L. 1997; amd. Secs. 7, 10(2), Ch. 514, L. 1999; amd. Sec. 27, Ch. 495, L. 2001; amd. Sec. 16, Ch. 462, L. 2005; amd. Sec. 3, Ch. 173, L. 2007; amd. Sec. 17, Ch. 418, L. 2011; amd. Sec. 7, Ch. 640, L. 2023.

Cross-References

Property tax levies, Title 15, ch. 10.
School property, Title 20, ch. 6, part 6.
School elections, Title 20, ch. 20.

20-9-354 through 20-9-359 reserved.

20-9-360. State equalization aid levy. There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the school equalization and property tax reduction account established in 20-9-336 for state equalization aid to the public schools of Montana.

History: En. Sec. 50, Ch. 11, Sp. L. June 1989; amd. Sec. 30, Ch. 767, L. 1991; amd. Sec. 38, Ch. 509, L. 1995; amd. Sec. 5, Ch. 580, L. 1995; amd. Sec. 31, Ch. 422, L. 1997; amd. Sec. 12, Ch. 496, L. 1997; amd. Sec. 17, Ch. 515, L. 1999; amd. Sec. 113, Ch. 584, L. 1999; amd. Sec. 13, Ch. 257, L. 2001; amd. Sec. 19, Ch. 542, L. 2005; amd. Sec. 4, Ch. 772, L. 2023; amd. Sec. 6, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-361. County equalization revenue. Revenue received in support of county equalization under the provisions of 20-9-331 and 20-9-333 is to be used for county equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles.

History: En. Sec. 51, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 729, L. 1991; amd. Sec. 39, Ch. 509, L. 1995; amd. Sec. 32, Ch. 422, L. 1997.

20-9-362. *(Effective July 1, 2026)* **Countywide levies to support BASE budgets.** (1) Pursuant to 20-9-141, the portion of a district's BASE budget not funded by BASE aid, fund balance reappropriated, nonlevy revenue, and, if applicable, a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302 is the district's BASE funding revenue requirement and must be funded through an elementary or high school countywide levy as described in this section.

(2) When the final school district general fund budgets of all school districts in the county have been adopted, the county superintendent shall separately total the BASE funding revenue requirements for the elementary and high school districts of the county, including any prorated levy requirements pursuant to subsection (3).

(3) The BASE funding revenue requirement for a joint school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the BASE funding revenue requirement for each county as provided in 20-9-151.

(4) The county superintendent shall apply any fund balance remaining from the prior fiscal year in the county elementary or high school BASE support fund to reduce the amount of revenue to be raised by the corresponding countywide levy.

(5) The county superintendent shall:

(a) calculate the number of mills to be levied on the taxable property in the county to finance the BASE funding levy requirement by subtracting from the amount determined in subsection (2) any fund balance determined under subsection (4) and then dividing the remaining total by the sum of:

(i) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(ii) the taxable valuation of the district divided by 1,000; and

(b) report the number of mills required to fund the BASE funding levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values.

(6) The county commissioners shall fix and set the countywide BASE funding levies in accordance with 20-9-142.

(7) The county superintendent of each county shall submit a report of the revenue amounts used to establish the BASE funding levy requirements to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

History: En. Sec. 23, Ch. 424, L. 2025.

Compiler's Comments

Effective Date: Section 29, Ch. 424, L. 2025, provided: "[This act] is effective July 1, 2026."

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-363 and 20-9-364 reserved.

20-9-365. *(Temporary)* **Adjustments to guaranteed tax base multipliers and calculations to mitigate impacts of reappraisal on property tax relief.** (1) The department of revenue and the office of public instruction shall annually collaborate and jointly assess how reappraisal affects, on a statewide basis, the portions of funding between guaranteed tax base aid and local property tax responsibilities for the general fund BASE budgets of school districts and the countywide school retirement funds budgets of counties.

(2) After completing the analysis under subsection (1) and by the May 1 deadline for finalizing guaranteed tax base aid ratios under 20-9-369, the office of public instruction shall annually adjust the guaranteed tax base multipliers and calculations outlined in 20-9-366

through 20-9-368 to prevent any statewide increase in property taxes due to the combined effects of reappraisal and the standard guaranteed tax base aid formulas for the general fund BASE budgets of school districts and the countywide school retirement funds budgets of counties.

20-9-365. *(Effective July 1, 2026)* **Adjustments to guaranteed tax base multipliers and calculations to mitigate impacts of reappraisal on property tax relief.** (1) The department of revenue and the office of public instruction shall annually collaborate and jointly assess how reappraisal affects, on a statewide basis, the portions of funding between guaranteed tax base aid and local property tax responsibilities for the general fund BASE budgets of school districts and the countywide school retirement funds budgets of counties.

(2) After completing the analysis under subsection (1) and by the May 1 deadline for finalizing guaranteed tax base aid ratios under 20-9-369, the office of public instruction shall annually adjust the guaranteed tax base multipliers and calculations outlined in 20-9-366 through 20-9-368 to prevent any statewide increase in property taxes due to the combined effects of reappraisal and the standard guaranteed tax base aid formulas supporting the countywide levy for BASE budget funding support and the countywide school retirement funds budgets of counties.

History: En. Sec. 19, Ch. 658, L. 2025; amd. Sec. 23, Ch. 658, L. 2025.

Compiler's Comments

Effective Date: Section 24, Ch. 658, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Coordination: Section 23, Ch. 658, L. 2025, a coordination section, provided a new subsection (2) effective July 1, 2026, to replace the current subsection (2) at that time.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-366. *(Temporary)* **Definitions.** Subject to adjustments pursuant to 20-9-336, as used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property value disregarded because of protested taxes under 15-1-409(2) or property subject to the creation of a new school district under 20-6-326, divided by the district's prior year GTBA budget area.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's prior year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts.

(4) "Guaranteed tax base aid budget area" or "GTBA budget area" means the portion of a district's BASE budget after the following payments are subtracted:

(a) direct state aid;
(b) the total data-for-achievement payment;
(c) the total quality educator and qualified staff payment;
(d) the total at-risk student payment;
(e) the total Indian education for all payment;
(f) the total American Indian achievement gap payment; and
(g) the state special education allowable cost payment.

(5) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible

district, means, subject to adjustment under 20-9-336 and 20-9-365, the sum of the taxable valuation in the previous year of all property in the state, multiplied by 262%, subject to adjustment by the superintendent of public instruction pursuant to section 20, Chapter 658, Laws of 2025, for fiscal year 2026 and by 262% for fiscal year 2027 and each succeeding fiscal year and divided by the prior year statewide GTBA budget area for the state elementary school districts or the state high school districts.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means, subject to adjustment under 20-9-336 and 20-9-365, the sum of the taxable valuation in the previous year of all property in the state, multiplied by 189%, subject to adjustment by the superintendent of public instruction pursuant to section 20, Chapter 658, Laws of 2025, for fiscal year 2026 and 189% for fiscal year 2027 and each succeeding fiscal year and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts. *(Terminates June 30, 2026—sec. 30, Ch. 424, L. 2025.)*

20-9-366. *(Effective July 1, 2026)* **Definitions.** Subject to adjustments pursuant to 20-9-336, as used in 20-9-366 through 20-9-371 the following definitions apply:

(1) (a) "County elementary guaranteed tax base ratio" or "county high school guaranteed tax base ratio" for guaranteed tax base funding for the countywide levy for BASE funding support of an eligible county means the taxable valuation in the previous year of all property in the county, divided by the sum of the prior year GTBA budget areas of the elementary school districts or the high school districts in the county. The GTBA budget areas for joint districts must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's prior year total per-ANB entitlement amount.

(2) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts.

(4) "Guaranteed tax base aid budget area" or "GTBA budget area" means the portion of a district's BASE budget after BASE aid is subtracted.

(5) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the countywide levy for BASE funding support, means, subject to adjustment under 20-9-336 and 20-9-365, the sum of the taxable valuation in the previous year of all property in the state, multiplied by the percentage determined under section 25, Chapter 424, Laws of 2025, for fiscal year 2027 and each succeeding fiscal year and divided by the prior year statewide GTBA budget area for the state elementary school districts or the state high school districts.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means, subject to adjustment under 20-9-336 and 20-9-365, the sum of the taxable valuation in the previous year of all property in the state, multiplied by 189% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' prior year total per-ANB entitlement amounts.

History: En. Sec. 60, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 3, Sp. L. May 1990; amd. Sec. 7, Ch. 711, L. 1991; amd. Sec. 1, Ch. 790, L. 1991; amd. Sec. 30, Ch. 633, L. 1993; amd. Sec. 3, Ch. 211, L. 1999; amd. Sec. 4, Ch. 550, L. 2003; amd. Sec. 17, Ch. 462, L. 2005; amd. Sec. 3, Ch. 194, L. 2007; amd. Sec. 19, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 261, L. 2011; amd. Sec. 2, Ch. 8, L. 2015; amd. Sec. 9, Ch. 336, L. 2017; amd. Sec. 3, Ch. 560, L. 2021; amd. Sec. 9, Ch. 745, L. 2023; amd. Sec. 30, Ch. 424, L. 2025; amd. Sec. 13, Ch. 482, L. 2025; amd. Sec. 7, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 30, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 13, Ch. 482, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 658, L. 2025. Amendment effective May 13, 2025, and terminates June 30, 2026.

The amendment to this section made by sec. 18, Ch. 424, L. 2025, was replaced by sec. 30, Ch. 424, L. 2025, a coordination section.

Section 30, Ch. 424, L. 2025, a coordination section, provided that if both House Bill No. 156 and Ch. 658 were passed and approved, then the amendments to this section in Ch. 658 terminate June 30, 2026. House Bill No. 156 was passed and approved as Ch. 424, L. 2025.

Transition: Section 25, Ch. 424, L. 2025, provided: "(1) The legislature intends this act to be fully operational in fiscal year 2027 with the first countywide levies to support BASE budgets levied in fiscal year 2027. The office of public instruction shall prepare for this implementation and support counties and school districts with this transition, including any necessary rulemaking, in a timely manner.

(2) (a) The superintendent of public instruction shall determine the multiplier used to calculate guaranteed tax base funding for the countywide levy for BASE funding support in 20-9-366(5)(a) for fiscal year 2027 to result in a statewide distribution of guaranteed tax base funding for the countywide levy for BASE funding support equal to the statewide distribution of guaranteed tax base funding for the BASE budgets of school districts in fiscal year 2026 multiplied by 1.03.

(b) The adjustment to the multiplier under subsection (2)(a) must remain in effect for subsequent fiscal years unless otherwise provided by law."

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-367. *(Temporary)* **Eligibility to receive guaranteed tax base aid or state debt service assistance for school facilities.** (1) If the district guaranteed tax base ratio of an elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of the district's GTBA budget area.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive debt service assistance in the form of a state advance or reimbursement for school facilities in support of the debt service fund. *(Terminates June 30, 2026—sec. 23, Ch. 658, L. 2025.)*

20-9-367. *(Effective July 1, 2026)* **Eligibility to receive guaranteed tax base aid or state debt service assistance for school facilities.** (1) If the county elementary or high school guaranteed tax base ratio is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the county may receive guaranteed tax base aid based on the number of mills levied for the countywide levy for BASE funding support.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive debt service assistance in the form of a state advance or reimbursement for school facilities in support of the debt service fund.

History: **En. Sec. 61, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 711, L. 1991; amd. Sec. 32, Ch. 767, L. 1991; amd. Sec. 31, Ch. 633, L. 1993; amd. Sec. 2, Ch. 586, L. 1995; amd. Secs. 4, 5, Ch. 211, L. 1999; amd. Sec. 9, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 404, L. 2017; amd. Sec. 19, Ch. 424, L. 2025; amd. Sec. 8, Ch. 658, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 19, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 8, Ch. 658, L. 2025. Amendment effective May 13, 2025, and terminates June 30, 2026.

Section 23, Ch. 658, L. 2025, a coordination section, provided that if both House Bill No. 156 and Ch. 658 were passed and approved, then the amendments to this section in Ch. 658 terminate June 30, 2026. House Bill No. 156 was passed and approved as Ch. 424, L. 2025.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-368. *(Temporary)* **Amount of guaranteed tax base aid.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of the district's GTBA budget area is calculated in the following manner:

(a) multiply the sum of the district's prior year GTBA budget area by the corresponding statewide guaranteed tax base ratio;

(b) subtract the prior year taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344. *(Terminates June 30, 2026—sec. 23, Ch. 658, L. 2025.)*

20-9-368. *(Effective July 1, 2026)* **Amount of guaranteed tax base aid.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid for each mill levied that a county may receive for the elementary or high school countywide levy for BASE funding support is calculated in the following manner:

(a) multiply the countywide elementary or high school prior year GTBA budget area by the corresponding statewide guaranteed tax base ratio;

(b) subtract the prior year taxable valuation of the county from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000.

(4) Guaranteed tax base aid provided to any county under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county receives more

guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.

History: **En. Sec. 62, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 711, L. 1991; amd. Sec. 33, Ch. 767, L. 1991; amd. Sec. 32, Ch. 633, L. 1993; amd. Secs. 6, 7, Ch. 211, L. 1999; amd. Sec. 10, Ch. 11, Sp. L. May 2000; amd. Sec. 3, Ch. 8, L. 2015; amd. Sec. 20, Ch. 424, L. 2025; amd. Sec. 9, Ch. 658, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section — Coordination: See 2025 Session Law for amendment made by sec. 20, Ch. 424, L. 2025. Amendment effective July 1, 2026.

See 2025 Session Law for amendment made by sec. 9, Ch. 658, L. 2025. Amendment effective May 13, 2025, and terminates June 30, 2026.

Section 23, Ch. 658, L. 2025, a coordination section, provided that if both House Bill No. 156 and Ch. 658 were passed and approved, then the amendments to this section in Ch. 658 terminate June 30, 2026. House Bill No. 156 was passed and approved as Ch. 424, L. 2025.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-369. *(Temporary)* **Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.

20-9-369. *(Effective July 1, 2026)* **Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and county guaranteed tax base ratios and, by May 1 of each year, with the final statewide and county guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

History: En. Sec. 63, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 790, L. 1991; amd. Sec. 34, Ch. 633, L. 1993; amd. Sec. 3, Ch. 586, L. 1995; amd. Sec. 21, Ch. 424, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 21, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-370. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $300 per ANB for an elementary school district;

(b) $450 per ANB for a high school district; or

(c) $370 per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

(3) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) has a district mill value per ANB that is less than the corresponding facility guaranteed mill value per ANB; and

(b) has a debt service obligation in the ensuing school year on bonds.

(4) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district.

History: En. Sec. 38, Ch. 633, L. 1993; amd. Sec. 38, Ch. 18, L. 1995; amd. Sec. 4, Ch. 586, L. 1995; amd. Sec. 5, Ch. 550, L. 2003.

20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/facility guaranteed mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on general obligation bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for general obligation bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on general obligation bonds sold in the debt service fund of the district. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on general obligation bonds to which the state advance for school facilities applies.

History: **En. Sec. 39, Ch. 633, L. 1993; amd. Sec. 5, Ch. 586, L. 1995; amd. Sec. 1, Ch. 492, L. 2003; amd. Sec. 6, Ch. 550, L. 2003.**

Cross-References

Duty of Superintendent of Public Instruction to distribute state and county equalization aid, 20-9-346.

20-9-372 through 20-9-374 reserved.

20-9-375. Repealed. Sec. 22, Ch. 462, L. 2005.

History: **En. Sec. 3, Ch. 437, L. 1997; amd. Sec. 1, Ch. 474, L. 2001.**

20-9-376. Purpose of increased funding beyond inflation. The increases in state funding of BASE aid, as defined in 20-9-306, that a school district uses to increase its previous year's adopted general fund budget by an amount in excess of the inflation calculated in compliance with 20-9-326 are for the purpose of assisting school districts in meeting costs of implementing the changes to the Administrative Rules of Montana adopted by the Montana board of public education during fiscal years 2012 and 2013 and to continue to enhance efforts at improving academic achievement for students enrolled in Montana's public schools.

History: **En. Sec. 33, Ch. 400, L. 2013.**

20-9-377 through 20-9-379 reserved.

20-9-380. School facilities fund. (1) There is a school facilities fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state must be deposited into this fund. Earnings not transferred to the school facility and technology account as provided in subsection (2) must be retained in the school facilities fund.

(2) The school facility and technology account established in 20-9-516 receives earnings from the school facilities fund as provided in 17-5-703.

History: **En. Sec. 1, Ch. 377, L. 2017; amd. Sec. 3, Ch. 259, L. 2017; amd. Sec. 4, Ch. 687, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 687, L. 2025. Amendment effective July 1, 2025.

20-9-381. Future ready payment — purpose — calculation — definitions. (1) Beginning in fiscal year 2028, the state shall provide a future ready payment to school districts. The payment is composed of incentive amounts as described in 20-9-306 and this section. The purpose of the payment is to:

(a) expand personalized career and technical education opportunities for middle school and high school pupils;

(b) reduce out-of-pocket costs for pupils and families in support of a pupil's postsecondary success;

(c) empower pupils to actively engage in forming their postsecondary success path; and

(d) provide expanded flexibility to districts to support the alignment of each pupil's postsecondary success path with each pupil's individual interests, passions, strengths, needs, and culture.

(2) The incentive amount of the future ready payment is based on three goal levels:

(a) goal level 1, high school graduates who while in high school earned 15 or more postsecondary or CTE-equivalent credits;

(b) goal level 2, high school graduates who while in high school earned 30 or more postsecondary or CTE-equivalent credits; and

(c) goal level 3, high school graduates who while in high school earned an associate-level degree.

(3) (a) A high school graduate may reach goal levels 1 and 2 using any combination of postsecondary and CTE-equivalent credits.

(b) A high school graduate who achieves a higher future ready goal level does not generate a lower goal level payment.

(4) For the purposes of 20-9-382 and this section, the following definitions apply:

(a) "CTE-equivalent credit" means the career and technical education (CTE) credit value ascribed by the department of labor and industry as set forth in 20-9-382.

(b) (i) "Postsecondary credit" means the successful completion of a course of study by a student enrolled in a high school district or K-12 school district that results in the student's eligibility for transcripted credit within the Montana university system.

(ii) No later than December 1, the commissioner of higher education shall provide to the office of public instruction an annually updated list of the criteria of courses of study, including any completion or examination requirements, that a high school student may take that result in eligibility for transcripted credit at any unit of the Montana university system based on the adopted policies of the board of regents of higher education. If the number of credits differs based on examination results, the list must include these differentiated credit values. The list submitted applies to the achievements of high school graduates from the prior school year.

History: En. Sec. 14, Ch. 482, L. 2025.

Compiler's Comments

Effective Date: Section 21, Ch. 482, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-9-382. CTE-equivalent credit — department of labor and industry — rulemaking. (1) Annually, but not later than December 1, the department of labor and industry shall adopt in rule a list of industry-recognized credentials, combinations of credentials, and work-based learning experiences, and the credit value of each. The list must:

(a) be developed, in part, with input from industry stakeholders, school districts, the office of public instruction, and the office of the commissioner of higher education;

(b) include credentials, combinations of credentials, and work-based learning experiences that lead to enhanced employment opportunities at higher rates of compensation and, when feasible, are stackable toward further credentialing;

(c) note the credit value available in 3-credit increments; and

(d) be applicable from the date of adoption until the date a new list is adopted. However, if a credential or work-based learning experience is removed from the list, a high school student who is already enrolled in a listed course may receive credit for the course through the end of the current school term.

(2) The department of labor and industry shall adopt a process to add recognition for credentials and work-based learning experiences between list updates that are available to any student. The process must:

(a) be set forth in administrative rule, written to include factors for consideration of inclusion and exclusion;

(b) solely allow for a high school district or K-12 school district to submit proposed recognition; and

(c) provide for posting added credentials and work-based learning experiences to the department of labor and industry website.

(3) The department of labor and industry may adopt rules necessary for the implementation of this section.

History: En. Sec. 15, Ch. 482, L. 2025.

Compiler's Comments

Effective Date: Section 21, Ch. 482, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

20-9-383. Incentives for school districts based on sharing resources. (1) Beginning in school fiscal year 2027, a school district must receive an enhanced quality educator and qualified staff payment, calculated as provided in 20-9-306 and this section, if it meets the legislative goals for resource sharing as described in this section.

(2) If two or more school districts, or three or more school districts when one district is either an elementary or high school district of a unified school system, cooperate to jointly

employ an individual who qualifies as a quality educator or qualified staff under 20-9-327, with each district employing the individual as no less than a 0.33 full-time equivalent employee, that employee must be counted as a 1.0 full-time equivalent employee for the purposes of calculating the total quality educator and qualified staff payment provided in 20-9-306 for each district participating in the joint employment of the individual.

(3) Joint employment for school districts [is met] if the districts employ the individual directly or through the terms of a multidistrict agreement as provided in 20-3-363.

History: En. Sec. 16, Ch. 482, L. 2025.

Compiler's Comments

Transition — Coordination: Section 18, Ch. 482, L. 2025, provided: "(1) (a) The legislature intends that the enhanced incentive and flexibility in meeting the legislative goals for competitive teacher base pay under [this act] apply for and are to be distributed in fiscal year 2026 and that the superintendent of public instruction robustly support educational entities in fulfilling the data submission requirements to meet the legislative goals.

(b) For school fiscal year 2026 only:

(i) prior to enhancements under subsection (1)(b)(ii) and applicable for the fiscal year 2026 budget, each school district must have the number of full-time equivalent quality educators and qualified staff increased by 1.

(ii) an educational entity must receive the enhanced incentives based on the entity's commitment, in a format prescribed by the superintendent of public instruction, to meet the revised legislative goals for fiscal year 2026 established in [this act]:

(A) a teacher base salary in fiscal year 2026 that is at least 11 times the fiscal year 2026 quality educator and qualified staff payment amount provided in 20-9-306, as amended in House Bill No. 15; and

(B) a teacher base salary in fiscal year 2026 that is at least 62% of the teacher average salary in fiscal year 2025; and

(iii) the superintendent of public instruction shall allow an educational entity the opportunity to provide this commitment until [the effective date of this act] [May 8, 2025] or May 15, 2025, whichever is later, and adjust the entity's general fund BASE and maximum general fund budget limits and quality educator and qualified staff payment for fiscal year 2026 accordingly and as applicable.

(2) (a) The legislature intends that emergency authorized teachers are included with the quality educator and qualified staff payments distributed beginning in fiscal year 2026.

(b) The legislature intends that eligible district clerks are included with the quality educator and qualified staff payments distributed beginning in fiscal year 2027.

(c) The legislature intends that eligible educational sign language interpreters meeting the qualifications of the board of public education and employed by and working at the Montana school for the deaf and blind during the school fiscal year beginning July 1, 2024, are included with the quality educator and qualified staff payments distributed in school fiscal years beginning on or after July 1, 2025.

(3) The legislature intends that the increases in maximum general fund budget limits related to housing costs under [this act] apply for fiscal year 2026 and that the department of revenue and the superintendent of public instruction collaborate to meet this intention. As applies to school fiscal year 2026:

(a) the department of revenue shall provide the housing cost data as described in [this act] that it would have provided in December 2023, had [this act] been effective then, to OPI within 10 days of [the effective date of this act] [May 8, 2025]; and

(b) the superintendent of public instruction shall inform a school district of any increase to the district's maximum general fund budget limit for fiscal year 2026 by June 1, 2025.

(4) For 2025 only, the May 1 deadline for the superintendent of public instruction to provide financial information to school districts under 20-9-369 is extended to June 1.

(5) The legislature intends that the future ready payment component provided for in [section 14] [20-9-381] be fully operational for and result in initial distribution of funding by the office of public instruction during fiscal year 2028, based on the achievements of high school graduates of school year 2026 during their high school careers.

(6) The legislature intends that the incentive for resource sharing under [section 16] [20-9-383] be fully operational for and result in distribution of funding by the office of public instruction during fiscal year 2027."

Section 7, Ch. 671, L. 2025, a coordination section, amended sec. 18, Ch. 482, L. 2025, by inserting new subsection (2)(c).

Effective Date: Section 21, Ch. 482, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

2025 Code Commissioner Correction: In (3) the Code Commissioner substituted "is met" for "qualifies is met" to correct an apparent technical error.

20-9-384. School funding data dashboard. (1) The legislative fiscal analyst shall develop publicly available and interactive data tools related to school funding. The purpose of these tools is to help Montanans better understand school funding and to assist policymakers in monitoring the status of school funding.

(2) The data tools must:

(a) be based on the most accurate and current financial data available;

(b) allow for longitudinal analysis and disaggregation based on district type, size, and location; and

(c) include data measures related to but not limited to:

(i) the percent of total K-12 revenues provided by the state's share as defined in 20-9-306;

(ii) the percent of total K-12 revenues made up of property tax revenue;

(iii) the equitable distribution of the state's share and the equity of the funding formula;

(iv) base, average, and top teacher and administrator salaries compared regionally, nationally, and by state rankings; and

(v) other data measures as determined by the legislative fiscal analyst or as directed by the legislative finance committee.

(3) In developing the data tools, the legislative fiscal analyst shall collaborate with:

(a) the board of public education;

(b) the office of public instruction;

(c) the governor's office of budget and program planning;

(d) the legislative services division; and

(e) other organizations or entities as determined by the legislative fiscal analyst or as directed by the legislative finance committee.

History: En. Sec. 17, Ch. 482, L. 2025.

Compiler's Comments

Effective Date: Section 21, Ch. 482, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

Applicability: Section 22, Ch. 482, L. 2025, provided: "[This act] applies to school years beginning on or after July 1, 2025."

Part 4
School Bonds

Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.

Bond issues, Title 17, ch. 5.

Pledge of school bonds to secure deposits of public funds, 17-6-103.

20-9-401. Applicable laws for school district bonding. (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

(a) the issuance, refunding, and sale of school district bonds;

(b) the levying of taxes for payment of the principal and interest on school district bonds; and

(c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

Cross-References

Property tax levies, Title 15, ch. 10.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-402. Definition of school district for bonding purposes. For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" means any elementary district, high school district, county high school district, or community college district.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102; amd. Sec. 19, Ch. 219, L. 1997.

20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate general obligation bonds, oil and natural gas revenue bonds, or impact aid bonds of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds;

(e) funding a judgment against the district, including the repayment of tax protests lost by the district; or

(f) funding a debt service reserve account that may be required for oil and natural gas revenue bonds or impact aid revenue bonds.

(2) Money realized from the sale of bonds issued on the credit of a high school district may not be used for any of the purposes listed in subsection (1) in an elementary school district, and the money may be used for any of the purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served.

(3) If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in 17-5-116(1) or tax credit bonds as provided in 17-5-117.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103; amd. Sec. 23, Ch. 658, L. 1987; amd. Sec. 8, Ch. 213, L. 1989; amd. Sec. 2, Ch. 492, L. 2003; amd. Sec. 21, Ch. 489, L. 2009; amd. Sec. 16, Ch. 400, L. 2013.

Cross-References

Sale of notes in anticipation of federal or state revenue or issuance of bonds, 7-7-109.

Vote unnecessary if bond issue authorized, 20-6-603.

20-9-404. Contracts and bonds for joint construction. (1) The trustees of a school district may enter into a contract with the trustees of any school district within the county, with any school district in an adjoining county, with the governing body of another political subdivision within the county in which the school district is located, or with the governing body of a political subdivision of a county adjoining the school district to provide for the joint construction of a facility upon terms and conditions mutually agreed upon between the districts.

(2) The trustees of any district executing a contract in accordance with this section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1; amd. Sec. 2, Ch. 397, L. 1997; amd. Sec. 1, Ch. 166, L. 1999; amd. Sec. 114, Ch. 584, L. 1999; amd. Sec. 10, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Cross-References

Interlocal Agreements, Title 7, ch. 11, part 1.

20-9-405. Proportional joint ownership — disposition of money. The facility constructed under 20-9-404 must be jointly owned by the school districts or other political subdivisions contributing to its construction in proportion to the contribution of each political subdivision. The sale or other disposition of a district's interest in the facility must be made in accordance with 20-6-604. Money received from the sale or disposition of a district's interest in a facility must be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2; amd. Sec. 3, Ch. 397, L. 1997; amd. Sec. 2, Ch. 166, L. 1999.

20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — oil and natural gas payment. (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, is 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, regardless of whether the general obligation bonds finance elementary program improvements or high school program improvements, is the sum of 100% of the taxable value of the property in its elementary program subject to taxation and 100% of the taxable value of the property in its high school program subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) Unless the maximum amount calculated under subsection (1)(a) yields a greater amount, the maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, is the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, unless the maximum amount calculated under subsection (1)(b) yields a greater amount, the maximum amount for which the district may become indebted is the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal of and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) The maximum amount of oil and natural gas revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual oil and natural gas production taxes received pursuant to 15-36-331, 15-36-332, and 20-9-310 for the 2 fiscal years immediately preceding the issuance of the bonds. At the time of the issuance of the bonds, the average annual payment of principal of and interest on the oil and natural gas revenue bonds each year may not exceed 35% of the total oil and natural gas production taxes received by the school district under the limitations in 20-9-310 for the immediately preceding fiscal year. If the oil and natural gas revenue bonds are also secured by a deficiency tax levy as provided in 20-9-437, the debt limitation provided in subsection (1) of this section applies to the bonds.

(5) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(6) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(7) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707.

History: **En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2); amd. Sec. 61, Ch. 614, L. 1981; amd. Sec. 12, Ch. 213, L. 1989; amd. Sec. 7, Ch. 555, L. 1991; amd. Sec. 34, Ch. 767, L. 1991; amd. Sec. 35, Ch. 633, L. 1993; amd. Sec. 15, Ch. 570, L. 1995; amd. Sec. 6, Ch. 586, L. 1995; amd. Sec. 23, Ch. 285, L. 1999; amd. Sec. 37, Ch. 426, L. 1999; amd. Sec. 30, Ch. 556, L. 1999; amd. Sec. 1, Ch. 10, L. 2001; amd. Sec. 3, Ch. 492, L. 2003; amd. Sec. 18, Ch. 462, L. 2005; amd. Sec. 1, Ch. 279, L. 2007; amd. Sec. 1, Ch. 213, L. 2009; amd. Sec. 5, Ch. 271, L. 2011; amd. Sec. 17, Ch. 400, L. 2013; amd. Sec. 1, Ch. 307, L. 2015.**

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) Pursuant to an agreement between a new major industrial facility and a school district and as a precondition to qualifying as class five property under 15-6-135(1)(c) before the amendment of 15-6-135 in Chapter 644, Laws of 2023, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, as much of the principal and interest on the bonds provided for under former subsection (1) of this section before the amendment in Chapter 644, Laws of 2023 as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in former subsection (1) of this section before the amendment in Chapter 644, Laws of 2023, the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(2) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: **En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985; amd. Sec. 2, Ch. 279, L. 2007; amd. Sec. 2, Ch. 307, L. 2015; amd. Sec. 3, Ch. 644, L. 2023.**

Cross-References

ANB defined, 20-1-101.
Educational impact statements, 20-1-208.
Calculation of average number belonging, 20-9-311.

20-9-408. Definition of forms of bonds. As used in this part, the following definitions apply:

(1) "Amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "General obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district.

(3) "Impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the fund established in 20-9-514.

(4) "Oil and natural gas revenue bonds" means bonds that pledge and are payable from a first lien on oil and natural gas production taxes received by a school district pursuant to 20-9-310. Oil and natural gas revenue bonds to which a tax deficiency is pledged are not considered general obligation bonds that are eligible to receive guaranteed tax base aid pursuant to 20-9-367 but are to be considered in determining the debt limit of a school district for the purposes of 20-9-406.

(5) "Serial bonds" means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105; amd. Sec. 7, Ch. 631, L. 1983; amd. Sec. 7, Ch. 256, L. 1989; amd. Sec. 40, Ch. 423, L. 1995; amd. Sec. 4, Ch. 492, L. 2003; amd. Sec. 18, Ch. 451, L. 2005; amd. Sec. 24, Ch. 44, L. 2007; amd. Sec. 18, Ch. 400, L. 2013.

20-9-409. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

20-9-410. Limitation of term and interest — timing for redemption. (1) School district bonds may not be issued for a term longer than 30 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. Other than refunding or redeeming bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107; amd. Sec. 11, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 71, Ch. 370, L. 1987; amd. Sec. 8, Ch. 256, L. 1989; amd. Sec. 19, Ch. 451, L. 2005; amd. Sec. 1, Ch. 337, L. 2017; amd. Sec. 1, Ch. 137, L. 2019.

20-9-411. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

20-9-412. Issuance of refunding bonds without election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;
(b) the reasons for issuing new bonds; and
(c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or
(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program that is authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

(6) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(b) Except as provided in subsection (6)(c), funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(4).

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the debt service fund for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109; amd. Sec. 6, Ch. 647, L. 1983; amd. Sec. 1, Ch. 158, L. 1993; amd. Sec. 41, Ch. 423, L. 1995; amd. Sec. 21, Ch. 277, L. 2003; amd. Sec. 4, Ch. 182, L. 2023.

Cross-References

Counties — advance refunding bonds, 7-7-2316.
Cities — advance refunding bonds, 7-7-4316.
Refunding bonds, Title 17, ch. 5, part 3.

20-9-413 through 20-9-420 reserved.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district may not issue bonds for any purpose other than that provided in 15-1-402, 20-9-412, and 20-9-471 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue the bonds. A school district bond election must be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition that asks for an election to be held to consider a bond proposition and that has been validated under the provisions of 20-9-425.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110; amd. Sec. 9, Ch. 213, L. 1989; amd. Sec. 1, Ch. 25, L. 2011.

Cross-References

Mail ballot elections prohibited, 13-19-104.
School elections, Title 20, ch. 20.

20-9-422. Additional requirements for trustees' resolution calling bond election. (1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

(a) specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds;

(b) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

(c) fix the maximum number of years in which the proposed bonds would be paid;

(d) in the case of initiation by a petition, state the essential facts about the petition and its presentation; and

(e) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election for a general obligation bond, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed general obligation bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the general obligation bond issue pursuant to 20-9-371(2).

History: **En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111; amd. Sec. 7, Ch. 586, L. 1995; amd. Sec. 5, Ch. 492, L. 2003; amd. Sec. 19, Ch. 400, L. 2013.**

20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds must:

(1) specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds;

(2) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

(3) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

(4) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they must be fastened together to form a single petition when submitted to the county registrar;

(5) be circulated by any one or more qualified electors of the school district; and

(6) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition circulated. The affidavit must attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: **En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112; amd. Sec. 6, Ch. 492, L. 2003; amd. Sec. 20, Ch. 400, L. 2013.**

20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse on the petition a certificate that must state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and certificate to the school district. The county election administrator may not receive compensation for the examination of school district bond petitions.

History: **En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979; amd. Sec. 313, Ch. 56, L. 2009.**

Cross-References

Local Election Administrator, Title 13, ch. 1, part 3.

20-9-425. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

History: **En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.**

Cross-References

Trustees' meetings and quorum, 20-3-322.

20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections.

(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this school district in the amount of........... dollars ($..........), payable semiannually, during a period not more than...... years, for the purpose........................... (here state the purpose the same way as in the notice of election)?

If this bond is passed, based on the taxable value of the school district, the property taxes on a home with an assessed market value for tax purposes of $100,000 would increase by $......... in the first year, of $300,000 would increase by $.......... in the first year, and of $600,000 would increase by $.......... in the first year. An increase in property taxes may lead to an increase in rental costs.

☐ BONDS — YES.
☐ BONDS — NO.

(3) The school district conducting the bond election may replace the estimate of the impact of the election on a home valued at $600,000 with an estimate of the impact of the election on a home of a different value.

History: **En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115; amd. Sec. 12, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 2, Ch. 144, L. 1997; amd. Sec. 7, Ch. 492, L. 2003; amd. Sec. 6, Ch. 271, L. 2011; amd. Sec. 21, Ch. 400, L. 2013; amd. Sec. 209, Ch. 49, L. 2015; amd. Sec. 5, Ch. 653, L. 2023.**

20-9-427. Notice of bond election by separate purpose. (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of............. County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the............. day of............., ..., an election of the registered electors of School District No.............. of............. County, state of Montana, will be held on the............. day of............., ..., at............. for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of the school district in the amount of.............. dollars ($..............), payable semiannually, for the purpose of.............. (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding.............. (state number) years.

The polls will be open from.............. o'clock ......m. and until.............. o'clock ......m. of the election day.

Dated and posted this....... day of.............

....
Presiding officer, School District No..............
of.................. County
Address..............................

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116; amd. Sec. 13, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 42, Ch. 423, L. 1995; amd. Sec. 8, Ch. 492, L. 2003; amd. Sec. 7, Ch. 271, L. 2011; amd. Sec. 22, Ch. 400, L. 2013.

Cross-References

School elections, Title 20, ch. 20.

20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) Except as provided in subsection (1)(c), if the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held in conjunction with an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a general or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election.

History: En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117; amd. Sec. 3, Ch. 503, L. 2005; amd. Sec. 8, Ch. 271, L. 2011; amd. Sec. 210, Ch. 49, L. 2015.

Cross-References

Cancellation and challenge of voter registration, Title 13, ch. 2, part 4.

Challenge of elector's right to vote, Title 13, ch. 13, part 3.

General canvassing requirements, Title 13, ch. 15.

20-9-429. Trustees' resolution to issue school district bonds pursuant to public sale. If the trustees conduct a public sale, at any time after the date of the election certificate, the trustees shall adopt a resolution calling for the sale of bonds of the school district. The resolution must specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the minimum purchase price of the bonds;

(4) the purpose or purposes of the issue;

(5) the date that the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) whether bids will be accepted for either serial or amortization bonds and, if so, the denomination of serial or amortization bonds;

(9) the date and time that the sale of the bonds must be conducted; and

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118; amd. Sec. 43, Ch. 423, L. 1995; amd. Sec. 21, Ch. 253, L. 2011.

20-9-430. Sale of school district bonds and notice of public sale. The trustees may sell school district bonds at public or private sale pursuant to 17-5-107. If the trustees conduct a public sale, the trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of ...., ..., at the hour of .... o'clock ......m. at ...., in the school district, sell to the highest and best bidder for cash (state here: general obligation, oil and natural gas revenue, or impact aid revenue) bonds of the school district in the total amount of .... dollars ($..............), for the purpose of ....

The bonds will be issued and sold in the aggregate principal amount of .... dollars ($.........) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of ...., ..., will pay interest commencing on the .... day of .... (month), ..., will be payable semiannually on the .... day of .... (month) and .... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than $ ...., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of .... dollars ($ ....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

....
Presiding officer, School District No..............
of.................... County
Address: ....

ATTEST:

Subscribed and sworn to before me this .... day of ...., ...; .... Notary Public for the State residing at ...., Montana. My commission expires ....

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119; amd. Sec. 14, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 8, Ch. 631, L. 1983; amd. Sec. 44, Ch. 423, L. 1995; amd. Sec. 9, Ch. 492, L. 2003; amd. Sec. 22, Ch. 253, L. 2011; amd. Sec. 23, Ch. 400, L. 2013.

20-9-431. Publication of notice of sale of school district bonds. If the trustees conduct a public sale, the trustees shall publish the notice of sale of the bonds, as provided in 17-5-106, in one or more newspapers as determined by the trustees.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979; amd. Sec. 4, Ch. 173, L. 1987; amd. Sec. 45, Ch. 423, L. 1995; amd. Sec. 23, Ch. 253, L. 2011.

20-9-432. Sale of school district bonds. (1) If the trustees conduct a public sale, the trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds must be sold at not less than the minimum bid specified for bonds with accrued interest to date of delivery, and each bidder shall specify the rate of interest and purchase price at which the bidder will purchase the bonds. The trustees shall accept the bid that they judge most advantageous to the school district. Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any bids and to sell the bonds at private sale if they consider it in the best interests of the school district, except that the bonds may not be sold at less than the minimum sale price with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating the sale of bond issues if, in the opinion of the trustees, the cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. However, bond issues prepared or negotiated for sale under this section may not be combined for any other purpose but must be entered separately on the books of the county treasurer and must be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121; amd. Sec. 9, Ch. 631, L. 1983; amd. Sec. 46, Ch. 423, L. 1995; amd. Sec. 24, Ch. 253, L. 2011.

20-9-433. Form and execution of school district bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution or indenture of trust providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds. If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in 17-5-116(1) or tax credit bonds as provided in 17-5-117.

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979; amd. Sec. 47, Ch. 423, L. 1995; amd. Sec. 10, Ch. 492, L. 2003; amd. Sec. 22, Ch. 489, L. 2009.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation. (1) When the school district bonds have been executed by the presiding officer of the trustees and the school district clerk, the bonds must be registered by the county treasurer in the treasurer's bond registration book before the bonds are delivered to the purchaser. The bond registration must show:

(a) the date of issue;

(b) the redeemable date of each bond; and

(c) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed specimen copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123; amd. Sec. 48, Ch. 423, L. 1995.

20-9-435. Delivery of school district bonds and disposition of sale money. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than $50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election.

History: **En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 568, L. 1991; amd. Sec. 35, Ch. 767, L. 1991; amd. Sec. 20, Ch. 219, L. 1997.**

20-9-436. County attorney to assist in proceedings. The trustees of a school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of the county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, the county attorney shall carefully examine the transcript, and the transcript may not be sent until the county attorney has attached an opinion to the transcript that the proceedings are in full compliance with law. However, the trustees of any school district may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of these duties.

History: **En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979; amd. Sec. 314, Ch. 56, L. 2009.**

Cross-References

Conflict of interest, 20-1-205.

20-9-437. School district liable on bonds. (1) The full faith, credit, and taxable resources of a school district issuing general obligation bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of general obligation bonds.

(3) Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a general obligation of the school district. The school district's taxing power is not pledged for the repayment of impact aid revenue bonds.

(4) (a) Oil and natural gas revenue bonds must be payable from the oil and natural gas production taxes received by the school district under the limitations in 20-9-310 and deposited to the debt service fund.

(b) A school district, as long as it has specified that its oil and natural gas revenue bonds are further secured by a deficiency tax levy in the bond election question and notice under 20-9-426 and 20-9-427, may additionally provide that if for any reason the oil and natural gas production taxes received by the school district and the amounts in the debt service reserve account are inadequate to pay the principal of or interest on the bonds as they become due, payment will be made from a deficiency tax levy.

(5) If for any reason the oil and natural gas taxes or the amounts in the debt service reserve account are inadequate to pay the principal of or interest on any oil and natural gas revenue bonds as to which the school district has pledged a deficiency tax levy in accordance with subsection (4) as it becomes due, the school district shall, at least 15 days before the first

day of the month in which the board of county commissioners of the county or counties in which the school district is located levies the amount of taxes required, furnish to the county treasurer an estimate in writing of the amount of money required:

(a) by the school district for the payment of the principal of or interest on the bonded debt as it becomes due and to replenish the debt service reserve account;

(b) to establish reasonable reserve funds for either purpose; and

(c) by the school district for any other purpose set forth in this section.

(6) Annually and at the time and in the manner of levying other county or city and county taxes, the county treasurer shall, as instructed by the school district, to the extent of any deficiency resulting from oil and natural gas taxes to pay or secure oil and natural gas revenue bonds to which a deficiency tax is pledged and for any other purpose set forth in this section:

(a) until the bonded debt is fully paid, levy upon the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for the payment or reimbursement of the payment of the bonded debt in the current or ensuing fiscal year, or both; and

(b) until the bonded debt is fully paid, levy upon all of the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for replenishing amounts in the debt service reserve account.

(7) Taxes for the payment of any oil and natural gas revenue bonds to which the school district has pledged a deficiency tax must be levied on the taxable property located in the school district as stated in the resolution fixing the terms and conditions of the bonds, and all taxes for other purposes must be levied on all property located within the school district.

History: En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126; amd. Sec. 1, Ch. 549, L. 2001; amd. Sec. 11, Ch. 492, L. 2003; amd. Sec. 24, Ch. 400, L. 2013.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-438. Preparation of general obligation debt service fund budget — operating reserve. (1) The trustees of each school district having outstanding general obligation bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year;

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (4); and

(c) an amount to satisfy the reserve requirement for oil and natural gas revenue bonds.

(3) The trustees of a school district having outstanding oil and natural gas revenue bonds shall include in the debt service reserve account of the final budget adopted in accordance with 20-9-133 oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement. Funds remaining in the debt service reserve account may not be reappropriated or reverted and must be used for the purposes set forth in 20-9-474.

(4) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(5) The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the

county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district.

History: **En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127; amd. Sec. 1, Ch. 132, L. 1987; amd. Sec. 36, Ch. 767, L. 1991; amd. Sec. 9, Ch. 211, L. 1997; amd. Sec. 12, Ch. 492, L. 2003; amd. Sec. 25, Ch. 400, L. 2013.**

20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate. Subject to 20-6-326, the following provisions apply:

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.

History: **En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128; amd. Sec. 2, Ch. 132, L. 1987; amd. Sec. 37, Ch. 767, L. 1991; amd. Sec. 8, Ch. 133, L. 1993; amd. Sec. 36, Ch. 633, L. 1993; amd. Sec. 8, Ch. 586, L. 1995; amd. Sec. 2, Ch. 549, L. 2001; amd. Sec. 13, Ch. 492, L. 2003; amd. Sec. 4, Ch. 194, L. 2007; amd. Sec. 15, Ch. 152, L. 2011.**

Cross-References

Property tax levies, Title 15, ch. 10.

Mandamus, Title 27, ch. 26.

20-9-440. Payment of debt service obligations — termination of interest. (1) The school district shall provide the county treasurer with a general obligation bond, oil and natural gas revenue bond, or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as either impact aid revenue bonds or oil and natural gas revenue bonds, shall maintain a separate impact aid revenue bond debt service fund or oil and natural gas revenue bond debt service fund, as applicable, and an impact aid revenue bond debt service reserve account or oil and natural gas revenue bond debt service reserve account, if required. The school district shall credit all tax money, oil and natural gas revenue, or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer or, if a district has established an investment account and subsidiary checking account for the district's debt service fund under 20-9-235, the school district shall pay from the debt service fund all amounts of interest and principal on school district bonds as the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as they become due. If the bonds are held by the state of Montana, then all payments must be remitted to the state treasurer who shall cancel the coupons or bonds and return the coupons or bonds to the county treasurer with the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds becomes due and payable, interest ceases on that date unless sufficient funds are available to pay the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on the bond or installment continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129; amd. Sec. 14, Ch. 492, L. 2003; amd. Sec. 26, Ch. 400, L. 2013; amd. Sec. 2, Ch. 166, L. 2019.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-441. Redemption of bonds — investment of debt service fund money. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of the school district held by the state of Montana, the county treasurer shall apply the money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that the bonds will be paid on the interest due date. Before the interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on the bonds. When the state treasurer receives the payment, the treasurer shall cancel the bonds and any unpaid coupons of the bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of the school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply the available money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on that date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on the interest due date, the accrual of interest ceases on the interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of the school district may direct the county treasurer to purchase the bonds of the district if this can be done at not more than par and accrued interest or at a reasonable premium that the trustees may feel justified in paying, but not exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money must be invested by the trustees under the provisions of 20-9-213(4). The investments must be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979; amd. Sec. 315, Ch. 56, L. 2009.

20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on the treasurer's bond registration record and shall promptly notify the clerk of the school district when the payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file the canceled coupons and bonds in the clerk's office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131; amd. Sec. 316, Ch. 56, L. 2009.

20-9-443. Disposition of remaining debt service fund. (1) Except as provided in subsection (2), when all of the bonds, bond interest, and special improvement district obligations of a school district have been fully paid, all money remaining in the debt service fund for the school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district if the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid fund established pursuant to 20-9-514.

History: En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132; amd. Sec. 4, Ch. 480, L. 2001; amd. Sec. 3, Ch. 549, L. 2001; amd. Sec. 19, Ch. 462, L. 2005; amd. Sec. 25, Ch. 44, L. 2007.

20-9-444. Liability of officers for failure to provide fund for payment of bonds. When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

History: En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.

Cross-References

Penalty for violation of school laws, 20-1-207.
Trustee removal, 20-3-310.
Personal immunity and liability of trustees, 20-3-332.

20-9-445. Liability for misuse of bond payment fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.

Cross-References

Penalty for violation of school laws, 20-1-207.
Trustee removal, 20-3-310.
Personal immunity and liability of trustees, 20-3-332.

20-9-446. Duty of county attorney to prosecute. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

Cross-References

Conflict of interest, 20-1-205.

20-9-447 through 20-9-450 reserved.

20-9-451. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.

20-9-452. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134; amd. Sec. 1, Ch. 42, L. 1985.

20-9-453. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.

20-9-454. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.

20-9-455. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.

20-9-456. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.

20-9-457 through 20-9-460 reserved.

20-9-461. Purpose. Section 20-9-464 and this section are intended to improve the marketability of bonds issued by school districts in order that the bonds may be sold upon the most favorable terms.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 9, Ch. 94, L. 2007.

20-9-462. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).

20-9-463. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).

20-9-464. Statute of limitations — action to test validity. A bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part); amd. Sec. 20, Ch. 451, L. 2005; amd. Sec. 10, Ch. 94, L. 2007.

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-465. Action to restrain bond issue — time for bringing. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Property tax levies, Title 15, ch. 10.
Bond Validating Act, Title 17, ch. 5, part 2.
Injunctions, Title 27, ch. 19.

20-9-466. Repealed. Sec. 3, Ch. 14, L. 2007.

History: En. Sec. 1, Ch. 12, Sp. L. January 1992; amd. Sec. 39, Ch. 18, L. 1995; amd. Sec. 115, Ch. 42, L. 1997.

20-9-467. Repealed. Sec. 3, Ch. 14, L. 2007.

History: En. Sec. 2, Ch. 12, Sp. L. January 1992.

20-9-468 through 20-9-470 reserved.

20-9-471. Issuance of obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, secure loans from or issue and sell to the board of investmentsor, as provided in subsection (2), a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111, obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment and construction of buildings used primarily for the storage and maintenance of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-saving measures as defined in 90-4-1102;

(c) the costs of nonpermanent modular classrooms necessary for student instruction when existing buildings of the district are determined to be inadequate by the trustees;

(d) any other expenditure that the district is otherwise authorized to make, subject to subsection (5), including the payment of settlements of legal claims and judgments; and

(e) the costs associated with the issuance and sale of the obligations.

(2) (a) Before seeking to secure a loan or issue and sell obligations to a regulated lender specified in subsection (1), the trustees shall first offer the board of investments a written notice of the board's right of first refusal.

(b) If the board of investments accepts the offer to issue a loan or purchase obligations, the board shall provide a written response to the trustees by the later of:

(i) 120 days following delivery of the trustees' offer to the board; or

(ii) the day after the next meeting of the board of investments.

(c) If the trustees have not received a written acceptance by the deadline provided for in subsection (2)(b), the trustees may seek to secure a loan or issue and sell an obligation to a regulated lender specified in subsection (1).

(3) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(4) (a) At the time of issuing the obligation, there must exist an amount in the budget of an applicable budgeted fund of the district for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget of an applicable budgeted fund of the district for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(b) For an obligation sold under subsection (1)(d) for the purposes of paying a tax protest refund, a district may pledge revenue from a special tax protest refund levy for the repayment of the obligation, pursuant to 15-1-402(7).

(5) Except as provided in 20-9-502, 20-9-503, and subsections (1)(a) and (1)(c) of this section, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments or a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111, for the construction project. The proposition must be approved at an election held in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(6) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the guaranteed cost savings under energy performance contracts as defined in 90-4-1102.

(7) Except as provided in subsection (4)(b), the obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.

(8) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(9) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments or a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111, at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.

(10) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

History: En. Sec. 1, Ch. 264, L. 1989; amd. Sec. 1, Ch. 719, L. 1991; amd. Sec. 38, Ch. 767, L. 1991; amd. Sec. 1, Ch. 37, L. 1995; amd. Sec. 1, Ch. 23, L. 1997; amd. Sec. 1, Ch. 499, L. 1997; amd. Sec. 2, Ch. 25, L. 2011; amd. Sec. 211, Ch. 49, L. 2015; amd. Sec. 7, Ch. 344, L. 2015; amd. Sec. 1, Ch. 1, L. 2017; amd. Sec. 1, Ch. 96, L. 2019.

20-9-472. Security for impact aid revenue bonds — agreement of state. (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the fund established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district,

as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.

History: **En. Sec. 15, Ch. 492, L. 2003; amd. Sec. 26, Ch. 44, L. 2007.**

20-9-473. Security for oil and natural gas revenue bonds. (1) To secure the payment of principal of and interest on oil and natural gas revenue bonds, the trustees of a school district, by resolution or indenture of trust, may provide that oil and natural gas revenue bonds are secured by a first lien on the oil and natural gas production revenue received pursuant to 20-9-310 and pledge to the holders of the oil and natural gas revenue bonds all of the oil and natural gas revenue deposited in the district's debt service fund.

(2) Upon receipt of oil and natural gas revenue, the county treasurer shall deposit in the district's debt service fund the amount that is required to pay the principal of and interest on the oil and natural gas revenue bonds due in the next 12-month period and to restore any deficiency in the oil and natural gas revenue debt service reserve account up to reserve requirements. Any remaining oil and natural gas revenue must be deposited as directed by the board of trustees as provided in 20-9-310. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's oil and natural gas revenue for purposes of making the annual debt service payments on oil and natural gas revenue bonds and may authorize the trustee to establish and maintain the oil and natural gas revenue bond debt service fund and oil and natural gas revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the debt service fund is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state may not limit, alter, or impair the ability of a school district to qualify for oil and natural gas revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include a pledge and undertaking in resolutions and indentures authorizing and securing the bonds as described in this subsection.

History: **En. Sec. 27, Ch. 400, L. 2013.**

20-9-474. Oil and natural gas revenue bond debt service reserve account. (1) If a school district issues oil and natural gas revenue bonds, the school district shall establish and maintain an oil and natural gas revenue bond debt service reserve account, to which there must be deposited or transferred an amount from bond proceeds or oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement.

(2) All money held in the oil and natural gas revenue bond debt service reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

History: **En. Sec. 28, Ch. 400, L. 2013.**

Part 5
Special Purpose Funds

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.
Bus depreciation reserve fund, 20-10-147.
School food services fund, 20-10-204, 20-10-207.

20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 20% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid;

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987; amd. Secs. 43, 89, Ch. 11, Sp. L. June 1989; amd. Sec. 39, Ch. 767, L. 1991; amd. Sec. 9, Ch. 133, L. 1993; amd. Sec. 43, Ch. 451, L. 1995; amd. Sec. 6, Ch. 580, L. 1995; amd. Sec. 10, Ch. 211, L. 1997; amd. Sec. 13, Ch. 496, L. 1997; amd. Sec. 1, Ch. 379, L. 1999; amd. Sec. 18, Ch. 515, L. 1999; amd. Sec. 13, Ch. 554, L. 1999; amd. Sec. 121, Ch. 574, L. 2001; amd. Sec. 3, Ch. 276, L. 2003; amd. Sec. 7, Ch. 550, L. 2003; amd. Sec. 28, Ch. 130, L. 2005; amd. Sec. 1, Ch. 405, L. 2005; amd. Sec. 27, Ch. 44, L. 2007; amd. Sec. 46, Ch. 2, L. 2009; amd. Sec. 23, Ch. 489, L. 2009; amd. Sec. 16, Ch. 152, L. 2011; amd. Sec. 8, Ch. 411, L. 2011; amd. Sec. 19, Ch. 389, L. 2013; amd. Sec. 4, Ch. 2, Sp. L. November 2017.

Cross-References

Participation of teachers in Social Security system, Title 19, ch. 1, part 8.
School fiscal year, 20-1-301.
Special funding provisions for special education cooperatives, 20-7-451.
Administration of finances, Title 20, ch. 9, part 2.

20-9-502. Purpose and authorization of building reserve fund — subfund structure. (1) The trustees of any district may establish a building reserve fund to budget for and expend funds for any of the purposes set forth in this section. Appropriate subfunds must be created to ensure separate tracking of the expenditure of funds from voted and nonvoted levies and transfers for school safety pursuant to 20-9-236.

(2) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for

school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(i) the purpose or purposes for which the new or addition to the building reserve will be used;

(ii) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(iii) the total amount of money that will be raised during the duration of time specified for the levy; and

(iv) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(b) Except as provided in subsection (4)(b), a building reserve tax authorization may not be for more than 20 years.

(c) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(d) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(3) (a) A subfund must be created to account for revenue and expenditures for school major maintenance and repairs authorized under this subsection (3). The trustees of a district may authorize and impose a levy of no more than 10 mills on the taxable value of all taxable property within the district for that school fiscal year for the purposes of raising revenue for identified improvements or projects meeting the requirements of 20-9-525. The 10-mill limit under this subsection (3) must be calculated using the district's total taxable valuation most recently certified by the department of revenue under 15-10-202. The amount of money raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525 may not exceed the district's school major maintenance amount as defined in 20-9-525. To authorize and impose a levy under this subsection (3), the trustees shall:

(i) following public notice requirements pursuant to 20-9-116, adopt no later than March 31 of each fiscal year a resolution:

(A) identifying the anticipated improvements or projects for which the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525 will be used; and

(B) estimating a total dollar amount of money to be raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, anticipated state aid pursuant to 20-9-525, and the resulting estimated number of mills to be levied using the district's taxable valuation most recently certified by the department of revenue under 15-10-202; and

(ii) include the amount of any final levy to be imposed as part of its final budget meeting noticed in compliance with 20-9-131.

(b) Proceeds from the levy may be expended only for the purposes under 20-9-525, and the expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(c) Whenever the trustees of a district impose a levy pursuant to this subsection (3) during the current school fiscal year, they shall budget for the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525 in the district's building reserve fund budget. Any expenditures of the funds must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(d) When a tax levy pursuant to this subsection (3) is included as a revenue item on the final building reserve fund budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(e) A subfund in the building reserve fund must be created for the deposit of proceeds from the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525.

(f) If the imposition of 10 mills pursuant to subsection (3)(a) is estimated by the trustees to generate an amount less than the maximum levy revenue specified in subsection (3)(a), the trustees may deposit additional funds from any lawfully available revenue source and may transfer additional funds from any lawfully available fund of the district to the subfund provided for in subsection (3)(a), up to the difference between the revenue estimated to be raised by the imposition of 10 mills and the maximum levy revenue specified in subsection (3)(a). The district's local effort for purposes of calculating its eligibility for state school major maintenance aid pursuant to 20-9-525 consists of the combined total of funds raised from the imposition of 10 mills and additional funds raised from deposits and transfers in compliance with this subsection (3)(f).

(4) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building;

(iv) reorganize with or annex another district under the provisions of Title 20, chapter 6; or

(v) receive approval from voters to expand an elementary district into a K-12 district pursuant to 20-6-326.

(b) Except as provided in subsection (4)(c), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or $250 per ANB for the current year. The duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for reorganization under 20-6-423 or annexation under 20-6-422:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(5) (a) A subfund in the building reserve fund must be created for:

(i) the funds transferred to the building reserve fund for school safety and security pursuant to 20-9-236; and

(ii) funds generated by a voter-approved levy for school and student safety and security pursuant to subsection (5)(b) of this section.

(b) A voted levy may be imposed with the approval of the qualified electors of the district to provide funding for improvements to school and student safety and security that meet any of the criteria set forth in 20-9-236(1). A voted levy for school and student safety and security may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406. The election for a voted levy for school and student safety and security must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205; amd. Sec. 62, Ch. 614, L. 1981; amd. Sec. 8, Ch. 555, L. 1991; amd. Sec. 18, Ch. 237, L. 2001; amd. Sec. 28, Ch. 495, L. 2001; amd. Sec. 5, Ch. 194, L. 2007; amd. Sec. 2, Ch. 213, L. 2009; amd. Sec. 13, Ch. 404, L. 2017; amd. Sec. 18, Ch. 3, L. 2019; amd. Sec. 2, Ch. 253, L. 2019; amd. Sec. 3, Ch. 245, L. 2021; amd. Sec. 15, Ch. 466, L. 2025; amd. Sec. 5, Ch. 687, L. 2025; amd. Sec. 3, Ch. 742, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 15, Ch. 466, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 5, Ch. 687, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 742, L. 2025. Amendment effective July 1, 2025.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School property, Title 20, ch. 6, part 6.

20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

(a) pledge the revenue from the building reserve fund levy for up to 15 years to repay loans used only for projects authorized by the electors of the district pursuant to 20-9-502.

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206; amd. Sec. 10, Ch. 133, L. 1993; amd. Sec. 2, Ch. 23, L. 1997; amd. Sec. 11, Ch. 211, L. 1997; amd. Sec. 17, Ch. 152, L. 2011; amd. Sec. 2, Ch. 1, L. 2017.

20-9-504. Extracurricular fund for pupil functions. (1) The trustees of a district may establish an extracurricular fund for the purposes of receiving and expending money collected for pupil extracurricular functions. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

(3) The trustees may invest any excess money in the extracurricular fund in accordance with the provisions of 20-9-213(4). Interest earned as a result of the investments may either be:

(a) credited to a general operating account within the fund to be used to offset expenses incurred in administering the fund; or

(b) distributed to the fund from which the money was withdrawn for investment.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 40, Ch. 767, L. 1991; amd. Sec. 1, Ch. 38, L. 2013.

20-9-505. Purpose and establishment of nonoperating fund. (1) The trustees of a district that will not operate a school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of the school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year fund balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, fund balances of the debt service fund and the miscellaneous programs fund, if any, must be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund operating reserve must be restored as the general fund operating reserve.

(3) The purpose of the nonoperating fund is to centralize the financing and budgeting for the limited functions of a district not operating a school. The functions include:

(a) tuition obligations to other districts;

(b) transportation of the resident pupils;

(c) maintenance of district-owned property; and

(d) any other nonoperating school function of the district considered necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund money must be made in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209; amd. Sec. 41, Ch. 767, L. 1991; amd. Sec. 7, Ch. 431, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 431, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 10, Ch. 431, L. 2025, provided: "[This act] applies to out-of-district attendance agreements for school fiscal years beginning on or after July 1, 2025."

Cross-References

School fiscal year, 20-1-301.
Elementary district abandonment, 20-6-209.
High school district abandonment, 20-6-307.

20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district that does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. The nonoperating budget must contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form must be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for the fund by subtracting from the amount authorized by the budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other money that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and the county commissioners shall impose the required levies on the district in accordance with 20-9-142.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210; amd. Sec. 11, Ch. 133, L. 1993; amd. Sec. 18, Ch. 152, L. 2011.

Cross-References

Property tax levies, Title 15, ch. 10.
State transportation reimbursement, 20-10-145.
County transportation reimbursement, 20-10-146.

20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979; amd. Sec. 42, Ch. 767, L. 1991; amd. Sec. 8, Ch. 466, L. 1993; amd. Sec. 15, Ch. 563, L. 1993; amd. Sec. 37, Ch. 633, L. 1993; amd. Sec. 44, Ch. 451, L. 1995; amd. Sec. 26, Ch. 22, L. 1997; amd. Sec. 14, Ch. 554, L. 1999; amd. Sec. 2, Ch. 356, L. 2001; amd. Sec. 18, Ch. 418, L. 2011; amd. Sec. 3, Ch. 46, L. 2013.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-508. Building fund. (1) The trustees of a district shall establish or credit the building fund whenever the district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing the sale;

(d) earns interest from the investment of building fund money under the provisions of 20-9-213(4), except that interest earned from the investment of bond money under the provisions of 20-9-435 must be credited to a fund in accordance with that section; or

(e) receives any other money, including payments made by a developer under the provisions of 20-9-615, for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund and must provide for a separate accounting of the money realized by each bond issue or by each construction project financed by a federal grant of money. Any other money deposited to the credit of this fund must be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Money credited to the building fund under the provisions of subsection (1)(a) must be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of the bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold must be transferred to the debt service fund to be used for the redemption of the bonds.

(4) Money credited to the building fund under the provisions of subsection (1)(b) must be expended for the express purpose or purposes authorized by the federal government in granting the money.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213; amd. Sec. 3, Ch. 506, L. 1995; amd. Sec. 12, Ch. 343, L. 1999.

Cross-References

Trustees' authority to acquire or dispose of sites and buildings, 20-6-603.
Sale of property when resolution passed after hearing, 20-6-604.
Administration of finances, Title 20, ch. 9, part 2.
Lease or sale of district property, 20-15-107.

20-9-509. Lease or rental agreement fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives money under the provision of 20-6-607 may establish a lease or rental agreement fund. All money received from the lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than $10,000 for an elementary or high school district or $20,000 for a K-12 district, the cash balance in excess of this limit must be transferred to the general fund of the district.

(2) Any expenditure of money from a lease or rental agreement fund must be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214; amd. Sec. 1, Ch. 58, L. 1983; amd. Sec. 1, Ch. 135, L. 1987; amd. Sec. 27, Ch. 22, L. 1997.

Cross-References

Leasing district property and disposition of any rentals, 20-6-607.

20-9-510. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

20-9-511. Interlocal cooperative fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-9-512. Compensated absence liability fund. (1) The trustees of a school district may establish a compensated absence liability fund for the purpose of paying:

(a) any accumulated amount of sick leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618; and

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

(2) The compensated absence liability fund may be used only for the stated purpose of this section.

(3) The trustees may transfer money from the general fund, within the adopted budget, to establish and maintain the compensated absence liability fund.

(4) The maximum amount in a reserve fund established under the provisions of subsections (1) and (3) may not exceed 30% of:

(a) the total school district liability for accumulated sick leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year; and

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year.

(5) For the purposes of this section, "administrative school district employee" means a school district employee who is employed in an administrative position and who accrues vacation leave as part of the employee's contract with the school district.

History: En. Sec. 1, Ch. 138, L. 1981; amd. Sec. 10, Ch. 568, L. 1991; amd. Sec. 1, Ch. 754, L. 1991; amd. Sec. 1, Ch. 129, L. 1995.

Cross-References

School fiscal year, 20-1-301.

20-9-513. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 384, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 24, Ch. 658, L. 1987.

20-9-514. Impact aid fund. (1) The trustees of a district that receives federal funds under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., shall establish an impact aid fund. Money received under the provisions of 20 U.S.C. 7701, et seq., must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to 20 U.S.C. 7701, et seq. The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds.

History: **En. Sec. 41, Ch. 633, L. 1993; amd. Sec. 28, Ch. 22, L. 1997.**

Cross-References

State educational goals to preserve cultural integrity of American Indians, Art. X, sec. 1, Mont. Const.

20-9-515. *(Temporary)* **Litigation reserve fund.** (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's general fund BASE budget levy requirement computed pursuant to 20-9-141.

20-9-515. *(Effective July 1, 2026)* **Litigation reserve fund.** (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's BASE funding revenue requirement computed pursuant to 20-9-141.

History: **En. Sec. 1, Ch. 493, L. 1995; amd. Sec. 22, Ch. 424, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 22, Ch. 424, L. 2025. Amendment effective July 1, 2026.

Applicability: Section 31, Ch. 424, L. 2025, provided: "[This act] applies to fiscal years beginning on or after July 1, 2026."

20-9-516. School facility and technology account — statutory appropriation for school technology purposes. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide funding for the following in priority order:

(a) school technology purposes as provided in subsection (3);

(b) contingent on appropriation from the legislature, other technology purposes;

(c) contingent on appropriation from the legislature, school major maintenance aid as provided in 20-9-525; and

(d) contingent on appropriation from the legislature, state debt service assistance as provided in 20-9-371.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the income received from certain lands and riverbeds as provided in 17-3-1003(5);

(c) earnings from the school facilities fund within the coal severance tax trust fund as provided in 17-5-703; and

(d) if applicable, excess interest and income revenue as provided in 20-9-622.

(3) (a) The amount of $1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in this section for grants for school technology purposes.

(b) By the last working day in August, the superintendent of public instruction shall allocate a portion of the $1 million for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts for the purposes of 20-9-533.

History: En. Sec. 8, Ch. 1, Sp. L. May 2007; amd. Sec. 14, Ch. 377, L. 2009; amd. Sec. 2, Ch. 371, L. 2011; amd. Sec. 19, Ch. 418, L. 2011; amd. Sec. 5, Ch. 17, L. 2013; amd. Sec. 7, Ch. 404, L. 2017; amd. Sec. 10, Ch. 6, Sp. L. November 2017; amd. Sec. 9, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 9, Ch. 739, L. 2025. Amendment effective July 1, 2025.

The amendment to this section made by sec. 6, Ch. 687, L. 2025, was replaced by sec. 9, Ch. 739, L. 2025, a coordination section.

The amendment to this section made by sec. 1, Ch. 739, L. 2025, was replaced by sec. 9, Ch. 739, L. 2025, a coordination section.

20-9-517. Repealed. Sec. 2, Ch. 247, L. 2019.

History: En. Sec. 9, Ch. 418, L. 2011; amd. Sec. 5, Ch. 329, L. 2013; amd. Secs. 29, 30, Ch. 400, L. 2013; amd. Sec. 3, Ch. 432, L. 2015; amd. Sec. 3, Ch. 433, L. 2015; amd. Sec. 10, Ch. 336, L. 2017.

20-9-518. Repealed. Sec. 2, Ch. 247, L. 2019.

History: En. Sec. 10, Ch. 418, L. 2011; amd. Sec. 8, Ch. 329, L. 2013; amd. Sec. 3, Ch. 29, L. 2015; amd. Sec. 4, Ch. 433, L. 2015; amd. Sec. 11, Ch. 336, L. 2017.

20-9-519 reserved.

20-9-520. Repealed. Sec. 2, Ch. 247, L. 2019.

History: En. Sec. 34, Ch. 400, L. 2013; amd. Sec. 4, Ch. 432, L. 2015; amd. Sec. 5, Ch. 433, L. 2015; amd. Sec. 12, Ch. 336, L. 2017.

20-9-521. Terminated. Sec. 43, Ch. 400, L. 2013.

History: En. Sec. 35, Ch. 400, L. 2013.

20-9-522 through 20-9-524 reserved.

20-9-525. School major maintenance aid — formula — filing. (1) The purpose of school major maintenance aid as provided in this section is to support school facility projects, including the payment of principal and interest on obligations issued pursuant to 20-9-471 for school facility projects, that support a basic system of free quality public elementary and secondary schools under 20-9-309, including but not limited to:

(a) improvements to school and student safety and security as described in 20-9-236(1); and

(b) projects designed to produce operational efficiencies such as utility savings, reduced future maintenance costs, improved utilization of staff, and enhanced learning environments for students, including but not limited to projects addressing:

(i) roofing systems;

(ii) heating, air-conditioning, and ventilation systems;

(iii) energy-efficient window and door systems and insulation;

(iv) plumbing systems;

(v) electrical systems and lighting systems;

(vi) information technology infrastructure, including internet connectivity both within and to the school facility; and

(vii) other critical repairs to an existing school facility or facilities.

(2) (a) In any year in which the legislature has appropriated funds for school major maintenance aid, the superintendent of public instruction shall administer the distribution of school major maintenance aid for deposit in the subfund of the building reserve fund provided for in 20-9-502(3)(e). Subject to proration under subsection (4) of this section, aid must be annually distributed no later than the last working day of May to a school district imposing a levy pursuant to 20-9-502(3) in the current school fiscal year, with the amount of state support per dollar of local effort of the applicable elementary and high school program of each district determined as follows:

(i) using the taxable valuation most recently determined by the department of revenue under 20-9-369:

(A) divide the total statewide taxable valuation by the statewide total of school major maintenance amounts and multiply the result by 355%;

(B) multiply the result determined under subsection (2)(a)(i)(A) by the district's school major maintenance amount;

(C) subtract the district's taxable valuation from the amount determined under subsection (2)(a)(i)(B); and

(D) divide the amount determined under subsection (2)(a)(i)(C) by 1,000;

(ii) determine the greater of the amount determined in subsection (2)(a)(i) or 18% of the district's mill value;

(iii) multiply the result determined under subsection (2)(a)(ii) by the district's school major maintenance amount, then divide the product by the sum of the result determined under subsection (2)(a)(ii) and the district's mill value; and

(iv) divide the result determined under subsection (2)(a)(iii) by the difference resulting from subtracting the result determined under subsection (2)(a)(iii) from the district's school major maintenance amount.

(b) For a district with an adopted general fund budget in the prior year greater than or equal to 97% of the district's general fund maximum budget in the prior year, the amount determined in subsection (2)(a)(iv) rounded to the nearest cent is the amount of school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(c) For a district with an adopted general fund budget in the prior year less than 97% of the district's maximum budget in the prior year, multiply the amount determined in subsection (2)(a)(iv) by the ratio of the district's adopted general fund budget in the prior year to the district's maximum general fund budget in the prior year. The result, rounded to the nearest cent, is the amount of state school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(3) Using the taxable valuation most recently determined by the department of revenue under 20-9-369, the superintendent shall provide school districts with a preliminary estimated amount of state school major maintenance aid per dollar of local effort for the ensuing school year no later than March 1 and a final amount for the current school year no later than July 31.

(4) If the appropriation for school major maintenance aid or the available funds in any school fiscal year are less than the amount of school major maintenance aid for which school districts would otherwise qualify, the superintendent of public instruction shall proportionally prorate the aid distributed to ensure that the distributions do not exceed the appropriated or available funds.

(5) A school district that receives school major maintenance aid shall, within 30 days of receiving the funds, file with the office of the superintendent of public instruction a document acknowledging it has received funds from the coal severance tax trust fund.

(6) For the purposes of this section, the following definitions apply:

(a) "Local effort" means an amount of money raised by levying no more than 10 mills pursuant to 20-9-502(3) and, provided that 10 mills have been levied, any additional amount of money deposited or transferred by trustees to the subfund pursuant to 20-9-502(3).

(b) "School major maintenance amount" means the sum of $40,000 and the product of $115 multiplied by the district's budgeted ANB for the prior fiscal year.

History: En. Sec. 8, Ch. 404, L. 2017; amd. Sec. 11, Ch. 6, Sp. L. November 2017; amd. Sec. 1, Ch. 10, L. 2019; amd. Sec. 2, Ch. 96, L. 2019; amd. Sec. 3, Ch. 253, L. 2019; amd. Sec. 4, Ch. 245, L. 2021; amd. Sec. 6, Ch. 772, L. 2023; amd. Sec. 11, Ch. 658, L. 2025; amd. Sec. 7, Ch. 687, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 11, Ch. 658, L. 2025. Amendment effective May 13, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 687, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-526 through 20-9-530 reserved.

20-9-531. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 635, L. 1987.

20-9-532. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 2, Ch. 635, L. 1987; amd. Sec. 10, Ch. 337, L. 1989.

20-9-533. Technology acquisition and depreciation fund — limitations. (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred for:

(a) the purchase, rental, repair, and maintenance of technological equipment, including computers and computer network access;

(b) cloud computing services for technology infrastructure, platform, software, network, storage, security, data, database, test environment, curriculum, or desktop virtualization purposes, including any subscription or any license-based or pay-per-use service that is accessed over the internet or other remote network to meet the district's information technology and other needs; and

(c) associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received for school technology purposes under 20-9-516; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district for levies approved prior to July 1, 2013, the trustees may include in the district's budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted pursuant to levies approved prior to July 1, 2013, may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund costs of providing the technologies included in subsection (1). The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by 15-10-425. A technology levy authorization approved after July 1, 2013, may not exceed 10 years.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy.

(8) A district whose qualified electors have previously approved a technology levy of perpetual duration prior to July 1, 2013, may submit a proposition to the qualified electors on or after July 1, 2013, for an increase in the amount of the levy to cover the costs of providing technologies under subsections (1)(b) and (1)(c) or to seek relief from the obligation of tracking depreciation of equipment under a levy approved prior to July 1, 2013. In seeking approval of the proposition, the district shall specify a proposed revised duration of the underlying perpetual levy previously approved and a proposed duration for the proposed increase in the amount of the levy, neither of which may exceed 10 years. If the proposition is approved by the qualified electors, both the underlying levy previously approved for a perpetual duration and the increase in the amount of the levy are subject to the revised durational limit specified on the ballot.

(9) The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance.

History: **En. Sec. 5, Ch. 517, L. 1995; amd. Sec. 29, Ch. 22, L. 1997; amd. Secs. 2, 3, Ch. 474, L. 2001; amd. Sec. 19, Ch. 152, L. 2011; amd. Sec. 1, Ch. 262, L. 2013; amd. Sec. 12, Ch. 658, L. 2025; amd. Sec. 8, Ch. 687, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 12, Ch. 658, L. 2025. Amendment effective May 13, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 687, L. 2025. Amendment effective July 1, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-9-534. Repealed. Sec. 11, Ch. 687, L. 2025.

History: **En. Sec. 6, Ch. 517, L. 1995; amd. Sec. 30, Ch. 22, L. 1997; amd. Sec. 6, Ch. 554, L. 2001; amd. Sec. 2, Ch. 3, Sp. L. August 2002; amd. Sec. 15, Ch. 377, L. 2009; amd. Sec. 20, Ch. 152, L. 2011; amd. Sec. 7, Ch. 329, L. 2013; amd. Sec. 2, Ch. 259, L. 2017; amd. Sec. 1, Ch. 475, L. 2021.**

20-9-535 and 20-9-536 reserved.

20-9-537. Montana Indian language preservation program. (1) There is a Montana Indian language preservation program. The program is established to support efforts of Montana tribes to preserve and perpetuate Indian languages in the form of spoken, written, sung, or signed language and to help meet the state's educational goal of preserving the cultural integrity of American Indians under Article X, section 1(2), of the Montana constitution.

(2) (a) The office of public instruction shall administer the program and, in collaboration with each tribal government of a federally recognized Indian tribe in Montana, shall create program guidelines.

(b) The program guidelines must:

(i) describe the roles of tribal governments, of tribal education, culture, or language departments or other recognized Indian education resource specialists, and of educational entities with which the tribe will partner, including but not limited to public school districts, community choice schools, nonpublic schools, tribal schools, postsecondary institutions, and early learning providers;

(ii) include definitions of language fluency in sufficient detail to allow measurement of progress toward Indian language preservation; and

(iii) address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(3) (a) The office of public instruction shall equally distribute funds to tribal governments in a manner described in the program guidelines. A tribal government wishing to participate in the program shall submit an application to the office of public instruction that includes at a minimum:

(i) if applicable, statements of commitment from educational entities with which the tribal government will partner through the program, including, if applicable, descriptions of how the efforts of the Montana Indian language preservation program will be integrated into Indian language immersion programs of school districts pursuant to Title 20, chapter 7, part 14;

(ii) a designation of a tribal entity to administer the program. The designation must be to the tribal education department or equivalent or, if the tribe does not have an education department, to another entity such as a tribal culture or language department or equivalent.

(iii) a description of the role of American Indian language and culture specialists in the program, including the number of specialists currently employed by partnering districts;

(iv) a detailed description of proposed curriculum development, instruction, and professional development activities, including:

(A) the role of American Indian language and culture specialists; and

(B) the utilization of curriculum and other materials developed by the tribe under the program during the years 2013 through 2021 that are securely housed in perpetuity at the Montana historical society;

(v) a description of how proposed activities support the tribal government's long-term strategy for Indian language preservation, including:

(A) an estimate of the current number of fluent speakers; and

(B) plans to build multigenerational fluency through:

(I) partnerships with early learning providers; and

(II) adult education offerings; and

(vi) a proposed budget for the expenditure of funds received under the program and any other anticipated funding sources. The budget may include professional development opportunities. The tribal entities administering the program are encouraged to partner with one another and utilize national and international organizations with expertise in language preservation and perpetuation in designing professional development opportunities.

(b) Tribal governments shall report annually to the office of public instruction in a format prescribed in the program guidelines. A tribal government failing to meet the reporting requirements may not receive program funds until reporting requirements have been met.

(c) The office of public instruction shall report to the legislature, to the education interim committee, and to the state-tribal relations committee in accordance with 5-11-210. The report must include:

(i) current program guidelines as required in subsection (2);

(ii) a summary of each participating tribal government's activities under the program; and

(iii) metrics that indicate how well activities funded under this program are promoting language fluency.

(4) Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities.

(5) A tribe may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this section.

History: En. Sec. 1, Ch. 410, L. 2013; amd. Sec. 1, Ch. 426, L. 2015; amd. Sec. 1, Ch. 232, L. 2017; amd. Sec. 3, Ch. 240, L. 2021; amd. Sec. 56, Ch. 261, L. 2021; amd. Sec. 3, Ch. 562, L. 2021; amd. Sec. 1, Ch. 571, L. 2023; amd. Sec. 1, Ch. 558, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 558, L. 2025. Amendment effective July 1, 2025.

20-9-538 through 20-9-540 reserved.

20-9-541. Repealed. Sec. 2, Ch. 9, L. 2021.

History: En. Sec. 1, Ch. 237, L. 2001.

20-9-542. Repealed. Sec. 2, Ch. 9, L. 2021.

History: En. Sec. 2, Ch. 237, L. 2001; amd. Sec. 8, Ch. 550, L. 2003.

20-9-543. School flexibility fund — uses. (1) The trustees of a district may establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

(a) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;

(b) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;

(c) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;

(d) student assessment and evaluation;

(e) the development of curriculum materials;

(f) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;

(g) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;

(h) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable; or

(i) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district.

(2) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. Sec. 3, Ch. 237, L. 2001; amd. Sec. 27, Ch. 457, L. 2015; amd. Sec. 1, Ch. 9, L. 2021.

20-9-544. Repealed. Sec. 2, Ch. 9, L. 2021.
History: **En. Sec. 4, Ch. 237, L. 2001.**

20-9-545 through 20-9-569 reserved.

20-9-570. *(Temporary)* **Statewide average per-pupil spending.** (1) The superintendent of public instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total pupils calculated in subsection (3).

(2) Funds to be included in total school expenditures for the second most recently completed school year include but are not limited to:

(a) district general fund expenditures;
(b) transportation;
(c) bus depreciation;
(d) food services;
(e) tuition;
(f) retirement;
(g) miscellaneous programs;
(h) traffic education;
(i) nonoperating fund;
(j) lease-rental agreement;
(k) compensated absence fund;
(l) metal mines tax reserve;
(m) state mining impact;
(n) impact aid;
(o) litigation reserve;
(p) technology acquisition;
(q) flexibility fund;
(r) debt service;
(s) building reserve; and
(t) interlocal agreement.

(3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB average provided in 20-9-311, for Montana school districts for the second most recently completed school year. *(Terminates December 31, 2029—sec. 20, Ch. 480, L. 2021.)*
History: **En. Sec. 22, Ch. 457, L. 2015.**

Part 6
Public School Fund and Grants to Schools

20-9-601. Public school fund. The public school fund must be maintained by the state treasurer as a fund in the permanent fund type, and the principal amount of the fund is irreducible and permanent. The following money must be credited to the fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property that revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) except as provided in 77-1-109, the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all money other than rental recovered from persons trespassing on the lands;

(7) the principal of all money arising from the sale of lands and other property that has been and may be granted to the state for the support of common schools;

(8) except as provided in 77-1-109, the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) other money as may be provided by the legislature.

History: **En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301; amd. Sec. 16, Ch. 281, L. 1983; amd. Sec. 4, Ch. 14, Sp. L. January 1992; amd. Sec. 6, Ch. 122, L. 1999; amd. Sec. 13, Ch. 34, L. 2001.**

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Public school fund inviolate, Art. X, sec. 3, Mont. Const.
Board of Land Commissioners, Art. X, sec. 4, Mont. Const.
Public school fund revenue, Art. X, sec. 5, Mont. Const.
The Enabling Act, sec. 11 (see anno. vol. 1).
Escheated estates, Title 72, ch. 14.

20-9-602. Title to farm mortgage lands vested in state and transfers validated. (1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: **En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.**

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept money that is or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The money must be deposited by the governor and superintendent of public instruction in the state treasury and is available for appropriation to the superintendent of public instruction. The money must be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept money provided from federal sources for the express purpose of distribution to nonpublic education. The money must be deposited by the governor and superintendent of public instruction in the state treasury and is available for appropriation to the superintendent of public instruction. The money must be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of money from federal sources under this section must be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which the money is maintained may not lapse at any time but must be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: **En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303; amd. Sec. 7, Ch. 10, L. 2009.**

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
Power to accept gifts, 20-6-601.
Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.

20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of a district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees may deposit the gift, legacy, devise, or the proceeds in any budgeted or nonbudgeted fund at the discretion of the trustees and may thereafter transfer any portion of the gift, legacy, devise, or proceeds to any other fund at the discretion of the trustees.

(2) If the trustees accept a gift, legacy, or devise pursuant to subsection (1) and if the donor, devisor, or testator specifies the gift, legacy, or devise for an endowment, the trustees

shall deposit the gift, legacy, devise, or proceeds in an endowment fund and shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund may be appropriated for any purpose. Money deposited in the endowment fund must be invested by the trustees according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30. All interest collected on the deposits or investments must be credited to the endowment fund.

(3) Whenever a district has been abandoned, the endowment fund of the abandoned district must be transferred and placed in the endowment fund in the district to which the territory is attached.

(4) As the custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county. By July 20, the county treasurer shall report to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in the treasurer's reports to the board of county commissioners.

(5) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district that become a part of the endowment fund.

(6) The trustees of a district that previously deposited donated funds in an endowment fund without specific instruction by the donor, devisor, or testator may move the donated funds and any accumulated interest to any other budgeted or nonbudgeted fund of the district and may spend donated funds and any accumulated interest unless restricted by condition imposed by the donor, devisor, or testator.

(7) The legislature encourages school district trustees to adopt a gift acceptance policy to determine the suitability of accepting gifts under this section.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309; amd. Sec. 1, Ch. 76, L. 2001; amd. Sec. 21, Ch. 152, L. 2011; amd. Sec. 1, Ch. 409, L. 2019.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.
Power to accept gifts, 20-6-601.

20-9-605 through 20-9-614 reserved.

20-9-615. Voluntary rural residential impact payments. (1) The trustees of a rural school district may negotiate with a real estate developer or subdivision developer in the school district to voluntarily contribute an impact payment to the district's building fund. The maximum amount of the payment that the trustees may accept must be based upon the number of pupils reasonably expected to move into the district because of the real estate development or subdivision development. Negotiations and any resulting contributions must be voluntary.

(2) For the purposes of this section, "rural school district" means a school district in which a majority of the pupils in the district reside outside the limits of any incorporated city or town.

History: En. Sec. 2, Ch. 506, L. 1995.

20-9-616 through 20-9-619 reserved.

20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-516(2)(a) and 77-1-109, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.

History: En. Sec. 1, Ch. 418, L. 2001; amd. Sec. 9(1), Ch. 554, L. 2001; amd. Sec. 3, Ch. 3, Sp. L. August 2002; amd. Sec. 16, Ch. 377, L. 2009; amd. Sec. 5, Ch. 465, L. 2009.

20-9-621. Permanent fund. (1) The public school fund provided for in Article X, section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

History: **En. Sec. 2, Ch. 418, L. 2001.**

20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. The guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts as the first source of funding for state equalization aid as provided in 20-9-343.

(2) Any excess interest and income revenue, as defined in 20-9-342, that is deposited in the guarantee account for distribution under this section must be transferred to the school facility and technology account provided for in 20-9-516.

History: **En. Sec. 3, Ch. 418, L. 2001; amd. Sec. 9(2), Ch. 554, L. 2001; amd. Sec. 4, Ch. 10, Sp. L. August 2002; amd. Sec. 1, Ch. 291, L. 2003; amd. Sec. 20, Ch. 1, Sp. L. May 2007; amd. Sec. 17, Ch. 377, L. 2009; amd. Sec. 6, Ch. 17, L. 2013; amd. Sec. 32, Ch. 400, L. 2013; amd. Secs. 13, 23, Ch. 336, L. 2017; amd. Sec. 7, Ch. 772, L. 2023; amd. Sec. 9, Ch. 687, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 687, L. 2025. Amendment effective July 1, 2025.

20-9-623 through 20-9-629 reserved.

20-9-630. Repealed. Secs. 11, 13(1), Ch. 2, Sp. L. November 2017.

History: **En. Sec. 244, Ch. 574, L. 2001; amd. Sec. 25, Ch. 13, Sp. L. August 2002; amd. Sec. 11, Ch. 550, L. 2003; amd. Sec. 13, Ch. 411, L. 2011; amd. Sec. 34, Ch. 268, L. 2013; amd. Sec. 3, Ch. 205, L. 2017; amd. Sec. 3, Ch. 332, L. 2017; amd. Sec. 14, Ch. 336, L. 2017.**

20-9-631. Repealed. Sec. 123, Ch. 2, L. 2009.

History: **En. Sec. 245, Ch. 574, L. 2001; amd. Sec. 26, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 518, L. 2003; amd. Sec. 12, Ch. 550, L. 2003.**

20-9-632. Repealed. Secs. 11, 13(1), Ch. 2, Sp. L. November 2017.

History: **En. Sec. 246, Ch. 574, L. 2001; amd. Sec. 27, Ch. 13, Sp. L. August 2002; amd. Sec. 2, Ch. 518, L. 2003; amd. Sec. 15, Ch. 336, L. 2017.**

20-9-633 and 20-9-634 reserved.

20-9-635. Natural resource development K-12 school facilities payment. (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs.

(2) The legislature intends the natural resource development K-12 school facilities payment to be a general fund appropriation to support school major maintenance aid pursuant to 20-9-525 and debt service assistance pursuant to 20-9-371 that is calculated as the greater of:

(a) $10 million increased by an inflationary adjustment calculated as provided in 20-9-326 applied in fiscal year 2024 and in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.

History: **En. Sec. 18, Ch. 336, L. 2017; amd. Sec. 24, Ch. 336, L. 2017; amd. Sec. 27, Ch. 429, L. 2017; amd. Sec. 2, Ch. 24, L. 2019; amd. Sec. 10, Ch. 687, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 687, L. 2025. Amendment effective July 1, 2025.

20-9-636 and 20-9-637 reserved.

20-9-638. Coal-fired generating unit closure mitigation block grant. (1) (a) The office of public instruction shall provide a coal-fired generating unit closure mitigation block grant to each school district with a fiscal year 2017 taxable valuation that includes a coal-fired generating unit with a generating capacity that is greater than or equal to 200 megawatts, was placed in service prior to 1980, and is retiring or planned for retirement on or before July 1, 2022.

(b) The electronic reporting system that is used by the office of public instruction and school districts must be used to allocate the block grant amount into each district's general fund budget as an anticipated revenue source.

(2) Each year, 70% of each district's block grant must be distributed in December and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(3) The block grant is equal to the amount received in fiscal year 2017 by the district general fund from the block grants provided for in former 20-9-630(4)(a) as that section read prior to July 1, 2017.

History: En. Sec. 19, Ch. 336, L. 2017; amd. Sec. 5, Ch. 2, Sp. L. November 2017; amd. Sec. 1, Ch. 152, L. 2023; amd. Sec. 1, Ch. 161, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 161, L. 2025. Amendment effective October 1, 2025.

20-9-639 reserved.

20-9-640. Terminated. Secs. 2, 3, Ch. 188, L. 2021.

History: En. Sec. 4, Ch. 416, L. 2017; amd. Sec. 1, Ch. 475, L. 2019; amd. Sec. 1, Ch. 188, L. 2021.

Part 7
Educational Cooperative Agreements

Part Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Authorization to create full service special education cooperatives, 20-7-451.

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

20-9-702. Financial administration of interlocal cooperative agreement. Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

History: En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.

20-9-703. District as prime agency. (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.

20-9-704. District as cooperating agency. (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.

20-9-705. Joint interstate school agreements. (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:

PROPOSITION
SCHOOL DISTRICT NO. ...., ... COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number .... of .... County, state of ...., for the purpose of (insert the purpose of such contract)?

☐ FOR execution of contract.
☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits. (1) As used in this section, "postsecondary institution" means a unit of the Montana university system, a public community college, or a tribal college.

(2) A school district may enter into an interlocal agreement pursuant to Title 7, chapter 11, with a postsecondary institution to institute a "running start" program to allow 11th and 12th grade students, as defined by the district, to attend classes at the postsecondary institution at a cost determined by the interlocal agreement and to obtain credits in classes not available through the school district.

(3) An agreement entered into by the district and the postsecondary institution must state the amount for each credit to be paid to the postsecondary institution by the district or the student.

(4) To participate in the program, a student shall complete a running start application provided by the district. The district shall determine whether the student has the skills needed

to succeed in the proposed college coursework. If accepted, a student may earn both high school and college credits as determined by the interlocal agreement.

(5) In registering 11th and 12th grade students in the program, a postsecondary institution may not displace adult students attending the postsecondary institution.

(6) If accepted into the program, the student is responsible for transportation, books, and all supplies.

(7) If a student accepted into the program drops out of a class or classes at the postsecondary institution during the drop period established by the postsecondary institution, the postsecondary institution shall reimburse the district or the student the cost associated with the student's credits as determined by the interlocal agreement.

History: En. Sec. 1, Ch. 377, L. 2001.

20-9-707. Agreement with Montana youth challenge program or accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with the Montana youth challenge program or with a Montana job corps program accredited by the northwest commission on colleges and universities to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at the Montana youth challenge program or a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the Montana youth challenge program or an accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at a school in the district of residence or at the Montana youth challenge program or an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend the Montana youth challenge program or a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending the Montana youth challenge program or a job corps program may not claim the Montana youth challenge program's or job corps program's facility as the student's residence for the purposes of this section.

History: En. Sec. 1, Ch. 462, L. 2001; amd. Sec. 3, Ch. 132, L. 2005; amd. Sec. 47, Ch. 2, L. 2009; amd. Sec. 3, Ch. 137, L. 2009.

Part 8
Emergency School Closure

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.
School terms and holidays — released time, Title 20, ch. 1, part 3.
Energy supply emergencies, Title 90, ch. 4, part 3.

20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum aggregate hours by grade required by 20-1-301 by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

History: En. Sec. 1, Ch. 288, L. 1979; amd. Sec. 8, Ch. 430, L. 1997; amd. Sec. 12, Ch. 138, L. 2005.

20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Declaration of emergency" means a declaration by a board of trustees that an unforeseen emergency has occurred in the district.

(2) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar to make up at least 75% of the hours of pupil instruction lost due to an unforeseen emergency through any combination of the following:

(a) extending the school year beyond the last scheduled day;

(b) the use of scheduled vacation days in the district's adopted school calendar pursuant to 20-1-302;

(c) the conduct of pupil instruction on Saturdays as provided in 20-1-303; or

(d) extending instructional hours during the school day as provided in 20-1-302.

(3) "School day" means the school day set by the trustees as provided in 20-1-302.

(4) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or a combination of the foregoing that acts as a principal cause for a school district's inability to conduct a portion of the minimum aggregate hours of instruction required by 20-1-301.

History: En. Sec. 2, Ch. 288, L. 1979; amd. Sec. 1, Ch. 85, L. 1981; amd. Sec. 9, Ch. 430, L. 1997; amd. Sec. 13, Ch. 138, L. 2005; amd. Sec. 3, Ch. 151, L. 2021.

20-9-803. Repealed. Sec. 11, Ch. 430, L. 1997.
History: En. Sec. 3, Ch. 288, L. 1979.

20-9-804. Repealed. Sec. 11, Ch. 430, L. 1997.
History: En. Sec. 4, Ch. 288, L. 1979.

20-9-805. Rate of reduction in BASE aid. (1) Except as provided in 20-9-806, for each hour short of the minimum number of aggregate hours required by law that a school district fails to conduct by reason of one or more unforeseen emergencies, the superintendent of public instruction shall reduce the BASE aid of the district for that school year by a proportionate amount.

(2) Kindergarten, grade 1 through 3, and grade 4 through 12 programs must be considered separately for the purpose of computing compliance with minimum aggregate hour requirements and any loss of BASE aid.

History: En. Sec. 5, Ch. 288, L. 1979; amd. Sec. 7, Ch. 299, L. 1985; amd. Sec. 14, Ch. 138, L. 2005; amd. Sec. 4, Ch. 151, L. 2021.

20-9-806. School closure by declaration of emergency. (1) (a) Except as provided in subsection (2), if a school is closed by reason of an unforeseen emergency that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution, the pupil-instruction time lost during the closure need not be rescheduled to meet the minimum requirement for aggregate hours that a school district must conduct during the school year in order to be entitled to full BASE aid.

(b) At least 75% of the pupil-instruction time lost due to the unforeseen emergency must have been made up before the trustees can declare that a reasonable effort has been made.

(2) The board of trustees may close school for 1 school day each school year because of an unforeseen emergency and may not be required to reschedule the pupil-instruction time lost because of the unforeseen emergency. The 1-school-day closure under this subsection is not subject to the reduction in BASE aid pursuant to 20-9-805.

History: En. Sec. 2, Ch. 85, L. 1981; amd. Sec. 10, Ch. 430, L. 1997; amd. Sec. 15, Ch. 138, L. 2005; amd. Sec. 5, Ch. 151, L. 2021.

Cross-References
Pupil-instruction-related days, 20-1-304.

Part 9
Supplemental Funding for Innovative Educational Programs (Repealed)

20-9-901. Repealed. Sec. 19, Ch. 480, L. 2021.
History: En. Sec. 1, Ch. 457, L. 2015.

20-9-902. Repealed. Sec. 19, Ch. 480, L. 2021.
History: **En. Sec. 2, Ch. 457, L. 2015.**

20-9-903. Repealed. Sec. 19, Ch. 480, L. 2021.
History: **En. Sec. 3, Ch. 457, L. 2015.**

20-9-904. Repealed. Sec. 19, Ch. 480, L. 2021.
History: **En. Sec. 4, Ch. 457, L. 2015.**

20-9-905. Repealed. Sec. 19, Ch. 480, L. 2021.
History: **En. Sec. 5, Ch. 457, L. 2015.**

20-9-906. Repealed. Sec. 19, Ch. 480, L. 2021.
History: **En. Sec. 6, Ch. 457, L. 2015.**

CHAPTER 10
TRANSPORTATION AND FOOD SERVICES

Part 1 — School Buses and Transportation

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20-10-148. Cost-effectiveness analysis required before purchase of small school bus.

Part 2 — Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services money.
20-10-202. Records, reports, and reviews.
20-10-203. School food commodities.
20-10-204. Duties of trustees.
20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.
20-10-206. Pupils in state institutional schools included.
20-10-207. School food services fund.
20-10-208. Terminated.

Part 1
School Buses and Transportation

Part Cross-References

Rules for determining residence, 1-1-215.
School property, Title 20, ch. 6, part 6.
Nonoperating fund to include funds for transportation of resident pupils, 20-9-505.
Meeting or passing school bus, 61-8-351.

20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Bus route" means a route approved by the board of trustees of a school district and by the county transportation committee.

(2) "Eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries:

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or

(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) (a) "Individual transportation" means transportation by which a district is relieved of actually conveying a pupil.

(b) The term may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(4) "Passenger seating position" means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

(5) (a) "School bus" means, except as provided in subsection (5)(b), any motor vehicle that complies with the bus standards established by the board of public education as verified by the department of justice's semiannual inspection of school buses and the superintendent of public instruction and:

(i) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school; or

(ii) is district-owned, is designed to carry 10 or fewer passengers, has an overall safety rating of five stars from the national highway traffic safety administration at the time of purchase, and is insured in accordance with minimum coverage requirements set forth in 20-10-109.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations and that was purchased prior to July 1, 2017;

(iv) an over-the-road passenger coach used only to transport pupils to activity events; or

(v) a passenger vehicle as defined in 20-10-129.

(6) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) individual transportation.

(7) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program.

History: **(1), (2)En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3)En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part); amd. Sec. 1, Ch. 525, L. 1983; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 43, Ch. 767, L. 1991; amd. Sec. 1, Ch. 359, L. 1993; amd. Sec. 1, Ch. 298, L. 1995; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 9, Ch. 550, L. 2003; amd. Sec. 1, Ch. 221, L. 2017; amd. Sec. 1, Ch. 149, L. 2023.**

Cross-References

Rules for determining residence, 1-1-215.

20-10-102. School bus requirements. (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: **En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).**

Cross-References

Power of Board of Public Education to adopt design, construction, and operation standards, 20-2-121.
Lettering requirement under highway code, 61-8-351.
Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.
When studded tires permitted — tires for school buses generally, 61-9-406.
Safety glazing material required, 61-9-408.
Semiannual inspection of school buses, 61-9-502.

20-10-103. School bus driver qualifications. A driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) (a) is the holder of a commercial driver's license to operate a school bus designed to carry more than 10 passengers; or

(b) is the holder of a Montana driver's license to operate a school bus designed to carry 10 or fewer passengers;

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) has complied with any other qualifications established by the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section.

History: **En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003; amd. Sec. 37, Ch. 443, L. 1987; amd. Sec. 1, Ch. 311, L. 1989; amd. Sec. 3, Ch. 195, L. 1993; amd. Sec. 2, Ch. 298, L. 1995; amd. Sec. 2, Ch. 221, L. 2017.**

Cross-References

Power of trustees to employ and dismiss bus drivers, 20-3-324.

20-10-104. Penalty for violating law or rules. (1) Every district, its trustees and employees, and every person under a transportation contract with a district is subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, the district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for any bus miles actually traveled during that fiscal year in violation of the law or policies.

(2) A district knowingly violates a transportation law or board of public education policy when it operates a bus route in a manner that does not comply with state law or board policy related to student safety. As provided in 20-10-141(1), a district that operates a bus route not approved by its county transportation committee may not receive transportation reimbursement on that route, but if the route is operated in compliance with transportation law, the operation of the routes is not a violation that will result in the forfeiture of all transportation aid to the district.

(3) The county superintendent shall suspend all reimbursements payable to the district under 20-10-145 and 20-10-146 for all miles being traveled, including both miles being traveled in compliance with the transportation laws or policies and miles being traveled in violation of the transportation laws or policies, until the district corrects the violation. When the district corrects the violation, the county superintendent shall pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation, but the amount forfeited under subsection (1) may not be paid to the district.

(4) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay the person for any bus miles traveled during the contract year in violation of law or policies. Upon discovering a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that the violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006; amd. Sec. 1, Ch. 427, L. 1997.

Cross-References

Penalty for violation of school laws, 20-1-207.

Knowingly defined, 45-2-101.

20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, except as provided in 20-9-707, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever the state is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016; amd. Sec. 16, Ch. 563, L. 1993; amd. Sec. 4, Ch. 132, L. 2005; amd. Sec. 7, Ch. 463, L. 2005.

20-10-106. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

20-10-107. Power of trustees. The trustees of any district may:

(1) purchase or rent a school bus;

(2) purchase or rent a communication system or safety device for a school bus when the trustees authorize a communication system or safety device as standard equipment in a school

bus because the bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a communication system or safety device owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees. The contract may not exceed the term of 5 years.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part); amd. Sec. 4, Ch. 8, L. 2015.

20-10-108. Two-way radio operation. When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-109. Liability insurance for school bus. Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than $10,000 per person and $100,000 for each accident for each bus operated by or under contract with the district.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-110. School bus purchase — contract — bids. When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

(a) prescribe minimum standards for the design, construction, and operation of school buses consistent with:

(i) the recommendations adopted by the national conference on school transportation; and

(ii) the federal motor vehicle safety standards;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four or more amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four or more red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;

(e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; and

(f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004; amd. Sec. 1, Ch. 455, L. 1981; amd. Sec. 1, Ch. 280, L. 1989; amd. Sec. 13, Ch. 343, L. 1999; amd. Sec. 19, Ch. 237, L. 2001; amd. Sec. 1, Ch. 246, L. 2021.

Cross-References

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

20-10-112. Duties of superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates because of isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to the superintendent and rule on the controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005; amd. Sec. 317, Ch. 56, L. 2009.

20-10-113 through 20-10-120 reserved.

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of a district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for an eligible transportee, the trustees shall provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and when that direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian under which the district would pay the parent or guardian for individually transporting the pupil or pupils fulfills the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may provide transportation or arrange for transportation for the parent's or guardian's child at the parent's or guardian's own expense to any district willing to accept the child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by individual transportation:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require the eligible transportee to ride a school bus for more than 1 hour each trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008; amd. Sec. 318, Ch. 56, L. 2009.

Cross-References

Supervised correspondence study, 20-7-116.

20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of a district may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from the school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. The school bus must service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsection (1)(a) or (1)(b), the district may charge each ineligible transportee a proportionate share, as determined by the trustees, of the cost of operating the school bus. Money realized from the payments must be deposited to the credit of the transportation fund.

History: En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009; amd. Sec. 319, Ch. 56, L. 2009.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride the school bus is secured from the operating district by the parent or guardian of the nonpublic school child and when there is seating capacity available on the school bus. When a nonpublic school child rides a school bus, the operating district may charge the child a proportionate share, as determined by the trustees, of the cost of operating the school bus. Money realized from the payments must be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010; amd. Sec. 1, Ch. 320, L. 1987; amd. Sec. 320, Ch. 56, L. 2009.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-124. Private party contract for transportation — individual transportation contract. (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition considered necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district must be under contract, and district, county, or state money may not be paid for transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year must be completed by the fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation must:

(a) be completed in triplicate, with one copy for the county superintendent, one copy for the private party, and one copy for the district;

(b) conform to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) be signed by the presiding officer of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation is subject to the following requirements:

(a) it must be completed in quadruplicate, with one copy for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it must be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of the child or children; and

(d) it must be signed by the presiding officer of the trustees and the parent or guardian of the eligible transportees.

History: **(1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012; amd. Sec. 31, Ch. 22, L. 1997.**

Cross-References

Conflicts of interests, letting contracts, calling for bids, 20-9-204.
Trustees to execute all contracts, 20-9-213.

20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than 12% per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

History: **En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947, 75-7013; amd. Sec. 1, Ch. 349, L. 1979; amd. Sec. 1, Ch. 97, L. 1981.**

Cross-References

Open meetings, Title 2, ch. 3, part 2.
Conflict of interest, 20-1-205.
Meetings and quorum, 20-3-322.
Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.
Supervised correspondence study, 20-7-116.
Trustees to execute all contracts, 20-9-213.

20-10-126. Establishment of transportation service areas. (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) (a) Except as provided in subsection (2)(b), a district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written

agreement with the district that the county transportation committee has assigned to transport the pupils.

(b) A district may extend a bus route across another transportation service area if the district determines that it is necessary in order to provide transportation to pupils in the district's own transportation service area. Under this subsection (2)(b), a district may not transport pupils from outside its transportation service area.

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.

(6) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(7) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: En. Sec. 8, Ch. 298, L. 1995; amd. Sec. 2, Ch. 427, L. 1997; amd. Sec. 1, Ch. 508, L. 2005.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-10-127. Repealed. Sec. 13, Ch. 550, L. 2003.

History: En. Sec. 9, Ch. 298, L. 1995.

20-10-128. Repealed. Sec. 13, Ch. 550, L. 2003.

History: En. Sec. 10, Ch. 298, L. 1995.

20-10-129. Transportation for special activities. (1) A district may use a passenger vehicle to transport students to or from school-sponsored functions or activities. A district may not use a passenger vehicle for purposes of transporting students to or from school on a regular bus route.

(2) A passenger vehicle that is owned by the district is not eligible to be included in the calculations for the bus depreciation reserve fund under 20-10-147.

(3) For purposes of this section, "passenger vehicle" means a motor vehicle that is:

(a) designed to transport 8 to 15 passengers and is the size and style of vehicle necessary to meet the needs of the district; and

(b) insured in accordance with the minimum coverage requirements established in 20-10-109.

History: En. Sec. 1, Ch. 292, L. 2021; amd. Sec. 2, Ch. 149, L. 2023.

20-10-130 reserved.

20-10-131. County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county, there must be a county transportation committee created in each county of the state of Montana. The membership of the committee consists of:

(a) the county superintendent;

(b) the presiding officer of the board of county commissioners or a member of the board designated by the presiding officer; and

(c) one representative of each school district within the county, except that an elementary district and high school district that compose a school system under 20-6-312 or 20-6-508 are limited to one representative for the school system. Each representative must be designated by the trustees of the respective school district or school system.

(2) The county transportation committee must have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(c), the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent is the presiding officer of the county transportation committee, and a quorum is a majority of the membership. A quorum must be present for the committee to conduct business. The committee shall meet on the call of the presiding officer or any three members of the committee. Each member of the committee is a voting member.

History: En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014; amd. Sec. 3, Ch. 298, L. 1995; amd. Sec. 1, Ch. 53, L. 2021.

20-10-132. Duties of county transportation committee. (1) It is the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;

(b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee's residence;

(d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; and

(e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with 20-5-321(1)(b).

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation committee within 90 days in order to be continued for a period longer than 90 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

(a) a map of the existing and proposed bus route;

(b) a description of turnarounds;

(c) conditions affecting safety;

(d) the total mileage and change in mileage of the affected bus route;

(e) the approximate total cost;

(f) reasons for the proposed bus route change;

(g) the number of children to be served;

(h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual

transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction, who shall issue a decision on the basis of the facts established at the county transportation committee hearing.

History: **En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015; amd. Sec. 4, Ch. 298, L. 1995; amd. Sec. 8, Ch. 464, L. 2001; amd. Sec. 1, Ch. 128, L. 2015.**

Cross-References

School fiscal year, 20-1-301.

20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by mileage rates. (1) The mileage rates in subsection (2) for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) Subject to adjustment by the superintendent of public instruction pursuant to section 20, Chapter 658, Laws of 2025:

(a) the rate for each bus mile traveled must be determined in accordance with the following schedule:

(i) 50 cents for a school bus as defined in 20-10-101(5)(a)(ii);

(ii) 95 cents for a school bus with a rated capacity of not more than 49 passenger seating positions;

(iii) $1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;

(iv) $1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;

(v) $1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and

(vi) $1.80 for a school bus with 80 or more passenger seating positions.

(b) Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.

(3) The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus.

History: **En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch. 590, L. 1979; amd. Sec. 1, Ch. 454, L. 1981; amd. Sec. 1, Ch. 515, L. 1983; amd. Sec. 1, Ch. 559, L. 1983; amd. Sec. 1, Ch. 344, L. 1985; amd. Sec. 10, Ch. 711, L. 1991; amd. Sec. 6, Ch. 298, L. 1995; amd. Sec. 10, Ch. 550, L. 2003; amd. Sec. 3, Ch. 221, L. 2017; amd. Sec. 3, Ch. 149, L. 2023; amd. Sec. 13, Ch. 658, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Cross-References

School fiscal year, 20-1-301.

Emergency budget for transportation fund, 20-9-162, 20-9-165.

Transportation fund as budgeted fund, 20-9-201.

20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection (1) and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip a day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 35 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, because of excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates because of isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate because of isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the committee and the superintendent of public instruction, the trustees shall pay the increased rate because of isolation. The increased rate is 1½ times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed $12.95 for each day of attendance for the first eligible transportee and $8.40 for each day of attendance for each additional eligible transportee.

(5) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is $12.95 for one eligible transportee and $8.40 for each additional eligible transportee of the same household.

(6) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district.

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979; amd. Sec. 2, Ch. 454, L. 1981; amd. Sec. 11, Ch. 711, L. 1991; amd. Sec. 2, Ch. 359, L. 1993; amd. Sec. 7, Ch. 298, L. 1995; amd. Sec. 2, Ch. 409, L. 2001; amd. Sec. 11, Ch. 4, Sp. L. December 2005.

Cross-References

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.
Supervised correspondence study, 20-7-116.

20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

(a) an adequate amount to finance the maintenance and operation of school buses owned and operated by the district;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

(a) pupils not residing in the district at the time of the adoption of the final budget and who subsequently became residents of the district during the school fiscal year;

(b) pupils who have become eligible transportees since the adoption of the final budget because their legal residence has been changed; or

(c) other unforeseen increases in bus route mileage or obligations for payment of additional contracts for individual transportation for an eligible transportee for which state and county reimbursement is authorized under 20-10-141 and 20-10-142. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than $100, in which case $100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The trustees shall report the transportation fund budget on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted final budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation to the county superintendent. The contracts must substantiate all contracted school bus transportation services incorporated in the final budget.

History: En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020; amd. Sec. 12, Ch. 711, L. 1991; amd. Sec. 44, Ch. 767, L. 1991; amd. Sec. 12, Ch. 211, L. 1997; amd. Sec. 14, Ch. 343, L. 1999.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 4 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) three-fourths is the budgeted state transportation reimbursement; and

(ii) one-fourth is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(i) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.

History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987; amd. Sec. 7, Ch. 35, L. 1989; amd. Sec. 87, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 267, L. 1991; amd. Sec. 13, Ch. 711, L. 1991; amd. Sec. 45, Ch. 767, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. July 1992; amd. Sec. 12, Ch. 133, L. 1993; amd. Sec. 17, Ch. 563, L. 1993; amd. Sec. 19, Ch. 9, Sp. L. November 1993; amd. Sec. 45, Ch. 451, L. 1995; amd. Sec. 7, Ch. 580, L. 1995; amd. Sec. 32, Ch. 22, L. 1997; amd. Sec. 13, Ch. 211, L. 1997; amd. Sec. 14, Ch. 496, L. 1997; amd. Sec. 19, Ch. 515, L. 1999; amd. Sec. 122, Ch. 574, L. 2001; amd. Sec. 29, Ch. 130, L. 2005; amd. Sec. 9, Ch. 255, L. 2005; amd. Sec. 22, Ch. 152, L. 2011; amd. Sec. 4, Ch. 46, L. 2013; amd. Sec. 6, Ch. 2, Sp. L. November 2017; amd. Sec. 14, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 14, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Cross-References

Property tax levies, Title 15, ch. 10.

Supervised correspondence study, 20-7-116.

20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is three-fourths of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement.

(3) The superintendent of public instruction shall make the disbursement to each school district according to the following schedule:

(a) By September 1 of each year, the superintendent of public instruction shall make a payment equal to 50% of the state transportation reimbursement paid to the district in the previous school year.

(b) By March 31 of each year, the superintendent of public instruction shall make a payment to the district equal to the approved amount of state reimbursement for first semester transportation claims less the amount distributed to the district under subsection (3)(a).

(c) By June 30 of each year, the superintendent of public instruction shall make a payment to the district to pay the balance of the approved amount due to the district for first and second semester transportation.

(4) Unless authorized for payment to a school district investment account established under 20-9-235, the payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

(5) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1).

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022; amd. Sec. 14, Ch. 711, L. 1991; amd. Sec. 46, Ch. 767, L. 1991; amd. Sec. 15, Ch. 343, L. 1999; amd. Sec. 21, Ch. 389, L. 2013; amd. Sec. 1, Ch. 299, L. 2017; amd. Sec. 3, Ch. 166, L. 2019; amd. Sec. 15, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 15, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

Cross-References

School fiscal year, 20-1-301.

20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be one-third the amount of the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

History: En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023; amd. Sec. 15, Ch. 711, L. 1991; amd. Sec. 40, Ch. 10, L. 1993; amd. Sec. 13, Ch. 133, L. 1993; amd. Sec. 3, Ch. 359, L. 1993; amd. Sec. 18, Ch. 563, L. 1993; amd. Sec. 46, Ch. 451, L. 1995; amd. Sec. 8, Ch. 580, L. 1995; amd. Sec. 15, Ch. 496, L. 1997; amd. Sec. 20, Ch. 515, L. 1999; amd. Sec. 123, Ch. 574, L. 2001; amd. Sec. 4, Ch. 276, L. 2003; amd. Sec. 30, Ch. 130, L. 2005; amd. Sec. 23, Ch. 152, L. 2011; amd. Sec. 10, Ch. 411, L. 2011; amd. Sec. 5, Ch. 46, L. 2013; amd. Sec. 7, Ch. 2, Sp. L. November 2017; amd. Sec. 16, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 16, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or communication systems and safety devices installed on the bus, including but not limited to global positioning systems, cameras, and two-way radios. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or communication systems and safety devices installed on the bus. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or communication systems and safety devices installed on the bus. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or communication systems and safety devices installed on the bus, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024; amd. Sec. 1, Ch. 69, L. 1991; amd. Sec. 11, Ch. 568, L. 1991; amd. Sec. 14, Ch. 133, L. 1993; amd. Sec. 1, Ch. 238, L. 1997; amd. Sec. 1, Ch. 157, L. 1999; amd. Sec. 115, Ch. 584, L. 1999; amd. Sec. 4, Ch. 220, L. 2001; amd. Sec. 24, Ch. 152, L. 2011; amd. Sec. 21, Ch. 418, L. 2011; amd. Sec. 5, Ch. 8, L. 2015.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

School elections, Title 20, ch. 20.

20-10-148. Cost-effectiveness analysis required before purchase of small school bus. The trustees of a district may not purchase and operate a school bus as defined in 20-10-101(5)(a)(ii) until the trustees have:

(1) conducted an analysis of the costs associated with purchase and operation of the school bus compared to the costs associated with purchase or contract and operation of a school bus designed to carry more than 10 passengers; and

(2) adopted a written finding that the purchase and operation of a school bus as defined in 20-10-101(5)(a)(ii) is the most cost-effective means of transporting eligible transportees on the bus route or routes to which the school bus will be assigned.

History: **En. Sec. 4, Ch. 221, L. 2017; amd. Sec. 4, Ch. 149, L. 2023.**

Part 2
Food Services

Part Cross-References

School food services defined, 20-1-101.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Wild animal meat to be donated to school lunch program, 87-1-226.

20-10-201. Acceptance, expenditure, and administration of federal school food services money. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization applies to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit the funds to the federal special revenue fund. Any disbursement of the federal school food services funds must be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe regulations, employ personnel, and take any other action that the superintendent of public instruction may consider necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for the services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

History: **En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002; amd. Sec. 17, Ch. 281, L. 1983; amd. Sec. 20, Ch. 237, L. 2001.**

Cross-References

Miscellaneous programs fund, 20-9-507.

Acceptance and expenditure of federal money for state, 20-9-603.

20-10-202. Records, reports, and reviews. (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records must be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and be preserved for the period of time, not to exceed 5 years, the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the inspections and administrative reviews of the financial records and the operation of school food services.

History: **En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003; amd. Sec. 26, Ch. 489, L. 1991.**

Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.

20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity state special revenue account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: **En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004; amd. Sec. 18, Ch. 281, L. 1983.**

Cross-References

Power of districts to accept gifts, 20-6-601.

Duty of trustees to execute all contracts, 20-9-213.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: **En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.**

Cross-References

Powers and duties of trustees generally, 20-3-324.

Power of districts to accept gifts, 20-6-601.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duty of trustees to execute all contracts, 20-9-213.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of those federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the local office of public assistance, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund must be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price for each meal that is charged to the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price for each meal.

(3) After the county superintendent's confirmation or adjustment of the claim, the county superintendent shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006; amd. Sec. 63, Ch. 114, L. 2003.

Cross-References

Allocation of federal funds in lieu of property taxes, 20-9-143.

20-10-206. Pupils in state institutional schools included. The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.

20-10-207. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.

Cross-References

Nonbudgeted fund defined, 20-9-201.

20-10-208. Terminated. Sec. 4, Ch. 437, L. 2001.

History: En. Sec. 1, Ch. 437, L. 2001.

CHAPTER 11
COMMUNITY CHOICE SCHOOLS

Part 1 — Community Choice Schools Act

20-11-101. Short title.
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20-11-124. Funding of choice schools.
20-11-125. Community choice school access to district facilities and land.
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Part 1
Community Choice Schools Act

20-11-101. Short title. This part may be cited as the "Community Choice Schools Act".

History: En. Sec. 1, Ch. 513, L. 2023.

20-11-102. Community choice schools — legislative findings and intent. (1) The legislature finds, pursuant to the authority and duties provided in Article X, section 1(3), of the Montana constitution, that:

(a) parents desire education options for their children;

(b) expanding educational opportunities for K-12 education within the state is a valid public purpose; and

(c) creating options that empower parents, encourage students to develop their full educational potential, provide a variety of professional opportunities for teachers, and encourage educational entrepreneurship is vital to the economic competitiveness of the state.

(2) It is the legislature's intent, pursuant to the authority and duties provided in Article X, section 1(3), of the Montana constitution, to create other public educational programs and institutions through choice schools. The purposes are to:

(a) enable parents to make decisions on how best to educate their children;

(b) provide other public educational opportunities for all students, especially those at risk of academic failure or academic disengagement;

(c) encourage the use of different models of teaching, governing, scheduling, and providing instruction to meet a wide variety of student and community needs; and

(d) advance Montana's commitment to the preservation of American Indian cultural identity, pursuant to Article X, section 1(2), of the Montana constitution, and to eliminate the American Indian achievement gap by encouraging participation in the choice school program by students, parents, and school districts in Indian country.

History: En. Sec. 2, Ch. 513, L. 2023.

20-11-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means a person or group that submits a proposal for a community choice school to an authorizer.

(2) "Authorizer" means the commission or a local school board approved as an authorizer by the commission.

(3) "Charter contract" means a fixed-term, renewable contract between a community choice school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(4) "Commission" means the community choice school commission provided for in 20-11-106.

(5) "Community choice school" or "choice school" means a public school that:

(a) has autonomy over decisions, including but not limited to matters concerning finance, board governance, personnel, scheduling, curriculum, and instruction;

(b) is governed by a governing board;

(c) is established and operated under the terms of a charter contract between the school's governing board and its authorizer;

(d) is a school in which parents choose to enroll their children;

(e) is a school that admits students based on capacity and then on the basis of a lottery if more students apply for admission than can be accommodated;

(f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;

(g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(h) operates under the oversight of its authorizer in accordance with its charter contract; and

(i) establishes graduation requirements and has authority to award degrees and issue diplomas.

(6) "Education service provider" means a for-profit education management organization, nonprofit education management organization, school design provider, or other partner entity with which a community choice school intends to contract for educational design, implementation, or comprehensive management.

(7) "Governing board" means an independent volunteer board of trustees of a community choice school that is a party to the charter contract with the authorizer.

(8) "Local school board" means a traditional school district board of trustees exercising management and control over a traditional local school district pursuant to the laws of the state.

(9) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(10) "Resident school district" means the public school district in which a student resides.

(11) "Student" means a child who is eligible for attendance in a public school in the state.

(12) "Traditional public school" means a traditional public school that is under the direct management, governance, and control of a local school board or the state.

(13) "Virtual community choice school" means a community choice school headquartered in Montana that offers educational services predominantly through an online program.

History: En. Sec. 3, Ch. 513, L. 2023.

20-11-104 and 20-11-105 reserved.

20-11-106. Community choice school commission — appointments. (1) There is an autonomous state community choice school commission with statewide authorizing jurisdiction and authority. The commission is attached to the board of public education for administrative purposes, as prescribed in 2-15-121(2), except as provided in this section, and is under the general supervision of the board of public education as set forth in this section.

(2) The commission is responsible for approving authorizers for choice schools throughout the state.

(3) The commission consists of seven members who are appointed as follows:

(a) two members appointed by the governor;

(b) one member appointed by the superintendent of public instruction;

(c) one member appointed by the president of the senate;

(d) one member appointed by the speaker of the house;

(e) one member appointed by the minority leader of the senate; and

(f) one member appointed by the minority leader of the house of representatives.

(4) Members appointed to the commission must collectively possess substantial experience and expertise in board governance, business, finance, education, management, and philanthropy. All members of the commission must have a demonstrated understanding of and commitment to choice schools as a strategy for strengthening public education.

(5) (a) Initial appointments to the commission must be for staggered terms as follows:

(i) 4-year terms for the appointees of the governor, one of whom must be designated by the governor as the initial presiding officer of the commission for 2 years;

(ii) 3-year terms for the appointees of the superintendent of public instruction and the minority leaders of the senate and house of representatives; and

(iii) 2-year terms for the appointees of the president of the senate and speaker of the house.

(b) All terms after the initial term must be for 3 years. Appointment to the initial terms must be made no later than 60 days following July 1, 2023. If any of the appointing authorities fails to make the appointments, the remaining appointing authorities may make the remaining appointments.

(6) Each member of the commission is entitled to reimbursement for expenses upon approval of the treasurer of the commission as provided in the commission's bylaws.

(7) A member of the commission may be removed by a majority vote of the commission for any cause that renders the member unable or unfit to discharge the duties of the office, including but not limited to failure to approve an authorizer or a choice school without just cause and interference with the functions of the commission as set forth in this part. Whenever a vacancy on the commission exists, the original appointing authority shall appoint a member for the remaining portion of the term consistent with the requirements of subsections (4) and (5).

(8) (a) The commission is authorized to receive and expend gifts and donations of any kind from any private source, including an individual. The gifts and donations may not require conditions that do not comport with the purposes of this part. Gifts and donations under this subsection (8)(a) must be deposited in the community choice school account pursuant to 20-11-126 and may be used by the commission for commission operations or distributed to choice schools at the discretion of the commission.

(b) The commission is authorized to seek and receive public funding that comports with the purposes of this part.

(9) The commission may hire staff for the commission. Support staff may be provided by the board of public education for centralized services, including payroll, human resources, accounting, information technology, or other services, if those services are determined by the commission and the board to be more efficiently provided by the board.

(10) The commission shall convene and approve bylaws and officers within 180 days of July 1, 2023.

(11) All commission meetings are open to the public pursuant to Article II, section 9, of the Montana constitution and 2-3-203.

(12) By August 1 of each year, the commission shall annually report to the state board of public education the academic performance and financial reports of each choice school authorized within the state.

History: En. Sec. 4, Ch. 513, L. 2023; amd. Sec. 1, Ch. 363, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 363, L. 2025. Amendment effective May 5, 2025.

20-11-107. Authorizers. (1) The state community choice school commission created under 20-11-106 may authorize choice schools in the state. The commission shall perform the functions of choice school authorizers under this part.

(2) (a) A local school board may apply to the commission for authorizing authority within the boundaries of the traditional school district overseen by the local school board.

(b) If the commission determines that the local school board fulfills the requirements of an authorizer, the commission shall, within 60 days of receipt of a local school board's application, approve the local school board as an authorizer.

(c) On approval, the commission shall register the local school board and shall provide the local school board with a letter confirming its approval as an authorizer.

(3) (a) The commission shall establish the annual application and approval process, including cycles and deadlines during the fiscal year, for local school boards to apply for authorizing authority as set forth in this section.

(b) By March 1 of each year, the commission shall make available information and guidelines for local school boards concerning the opportunity to apply for authorizing authority under this part.

(c) Each interested local school board shall submit an application that clearly explains or presents the following elements in a format to be established by the commission:

(i) written notification of intent to serve as a choice school authorizer in accordance with this part;

(ii) an explanation of the local school board's strategic vision for authorizing;

(iii) a plan supporting the local school board's strategic vision and an explanation of the local school board's budget and personnel capacity and commitment to execute the duties of choice school authorizing in accordance with this part;

(iv) a draft or preliminary outline of a request for proposal that will solicit choice school applicants in accordance with 20-11-111;

(v) a description or outline of the performance framework the local school board will use to guide the establishment of a charter contract and for ongoing oversight and evaluation of choice schools consistent with the requirements of this part;

(vi) a draft of the local school board's renewal, revocation, nonrenewal, and school closure processes consistent with 20-11-117 and 20-11-118;

(vii) a statement of assurance that the local school board commits to serving as a choice school authorizer in fulfillment of the expectations, spirit, and intent of this part and will fully participate in any authorizer training provided or required by the commission; and

(viii) a statement of assurance that the local school board will be accountable and transparent in all matters concerning authorizing practices, decisions, and expenditures.

(4) (a) Within 60 days of receipt of the application, the commission shall determine whether to approve an application based on a review of the documentation provided in subsection (3) and the quality of the application. The commission shall provide a letter to the local school board either confirming or denying acceptance as an authorizer.

(b) Within 30 days of approval of an application for choice school authorizing, the commission and the approved authorizer shall execute a renewable authorizing contract. The initial authorizing contract term is 6 years.

(5) A local school board may not engage in authorizing functions without a fully executed authorizing contract.

(6) When approved by the commission, the local school board continues as an authorizer from year to year during the term of the contract as long as the local school board fulfills all authorizing duties and expectations set forth in this part and remains an authorizer in good standing with the commission.

History: En. Sec. 5, Ch. 513, L. 2023; amd. Sec. 14, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 14, Ch. 53, L. 2025. Amendment effective October 1, 2025.

20-11-108. Authorizer responsibilities. (1) In accordance with this part, an authorizer is responsible for executing the following essential powers and duties:

(a) soliciting and evaluating choice school proposals;

(b) approving choice school proposals that meet identified educational needs and promote a diversity of educational choices, including but not limited to:

(i) creating more schools with high standards for pupil performance;

(ii) closing achievement gaps between high-performing and low-performing groups of public school students;

(iii) increasing educational opportunities within the public education system;

(iv) providing alternative learning environments for students who are not thriving in traditional school settings;

(v) addressing the dropout rate;

(vi) creating new professional opportunities for teachers, leaders, and other school personnel;

(vii) encouraging the use of innovative models of teaching, delivering content, and providing other aspects of K-12 education; and

(viii) providing students, parents, community members, and other local and philanthropic entities with expanded opportunities for involvement in the public education system;

(c) declining to approve inadequate choice school proposals;

(d) negotiating and executing sound charter contracts with each approved choice school;

(e) monitoring, in accordance with charter contract terms, the performance and legal compliance of choice schools; and

(f) determining whether each charter contract merits renewal, nonrenewal, or revocation.

(2) An authorizer may delegate its duties to its officers, employees, and contractors.

(3) Regulation of choice schools by authorizers is limited to the powers and duties described in this part, consistent with the intent of this part.

(4) An authorizer shall develop, carry out, and maintain authorizing policies and practices consistent with nationally recognized principles and standards for authorizing in all major areas of authorizing responsibility, including:

(a) organizational capacity and infrastructure;

(b) soliciting and evaluating choice school proposals;

(c) performance contracting;

(d) ongoing community choice school oversight and evaluation; and

(e) charter contract renewal decisionmaking.

(5) Evidence of material or persistent failure to carry out the duties enumerated in this section constitutes grounds for rescission of authorizing powers by the commission.

(6) Each authorizer shall submit to the commission an annual report summarizing:

(a) the authorizer's strategic vision for authorizing and progress toward achieving that vision;

(b) the academic and financial performance of all operating choice schools overseen by the authorizer, according to the performance expectations for choice schools set forth in this part;

(c) the status of the authorizer's choice school portfolio, identifying all choice schools approved but not yet open, operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;

(d) the authorizing functions provided by the authorizer to the choice schools under its direction, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles; and

(e) the services purchased from the authorizer by a choice school under the authorizer's direction, including an itemized accounting of the actual costs of these services, as required in 20-11-109.

(7) An employee, trustee, agent, or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a community choice school authorized by that entity.

(8) A government unit or other entity, other than those expressly granted authority under 20-11-107, may not assume any authorizing function or duty in any form unless expressly allowed by law.

History: En. Sec. 6, Ch. 513, L. 2023.

20-11-109. Duties of commission — oversight of authorizers. (1) (a) The commission shall establish a statewide formula for authorizer funding to be applied uniformly to every authorizer in the state. Authorizer funding is financed through an oversight fee.

(b) The oversight fee must be calculated as a uniform percentage of the state funding allocated to each choice school and is to be paid from the choice school's budget share of the per-pupil funding, not to exceed 3% of each community choice school's state funding in a single school year.

(c) The commission may establish a sliding scale for authorizer funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold after a certain number of years of authorizing, after a certain number of schools have been authorized, or for other reasons determined at the discretion of the commission.

(d) An authorizer's oversight fee may not include any costs incurred in delivering services that a choice school may purchase at its discretion from the authorizer. The authorizer shall use the funding provided under this section exclusively for the purpose of fulfilling authorizing obligations in accordance with this part.

(2) The commission is responsible for overseeing the performance and effectiveness of all authorizers established under this part.

(3) The commission shall annually review the effectiveness of the formula it established for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this part.

(4) By October 15 of each year, the commission shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(5) Persistently unsatisfactory performance of an authorizer's portfolio of community choice schools, a pattern of well-founded complaints about the authorizer or its choice schools, or other objective circumstances may trigger a special review by the commission.

(6) In reviewing or evaluating the performance of authorizers, the commission shall apply nationally recognized principles and standards for authorizing.

(7) If at any time the commission finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the commission, or the requirements of authorizers under this part, the commission shall notify the authorizer in writing of the identified problems and shall provide the authorizer reasonable opportunity to respond and remedy the problems.

(8) If an authorizer fails to respond and remedy the problems identified by the commission, the commission shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(9) In the event of revocation of an authorizer's authority, the commission shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the state, with the mutual agreement of each affected choice school and proposed new authorizer. The new authorizer shall assume the existing charter contract for the remainder of the charter contract term.

(10) On or before December 1 of each year, beginning in the first year that choice schools have been in operation for a full school year, the commission shall issue to the board of public education, the education interim committee, and the public an annual report on the state's community choice schools that includes data from the annual reports submitted by every

authorizer, as well as any additional relevant data compiled by the commission, for the school year ending in the preceding calendar year. The annual report must include:

(a) a comparison of the performance of choice school students with the performance of the comparable grade ranges of the choice school's students' resident district schools; and

(b) the commission's assessment of the successes, challenges, and areas for improvement in meeting the purposes of this part, including the commission's assessment of the sufficiency of funding for choice schools, the efficacy of the commission's formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's community choice schools.

History: En. Sec. 7, Ch. 513, L. 2023.

20-11-110. Purchase of services by choice school. (1) With the exception of oversight services as required by 20-11-109, a community choice school may not be required to purchase services from the choice school's authorizer as an express or implied condition of choice school approval or of executing a charter contract.

(2) A choice school may choose to purchase services from its authorizer. In that event, the choice school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the choice school. An authorizer may not charge more than market rates for services provided to a choice school.

(3) A choice school may purchase goods and services from for-profit providers for operational and ancillary purposes.

History: En. Sec. 8, Ch. 513, L. 2023.

20-11-111. Community choice school proposal process — request for proposal. (1) To solicit, encourage, and guide the development of choice schools, every authorizer operating under this part shall issue and broadly publicize a request for proposal by June 1 of each year. The content and dissemination of the request for proposal must be consistent with the purposes and requirements of this part.

(2) Each authorizer's request for proposal must present the authorizer's strategic vision for authorizing, including a clear statement of any preferences the authorizer wishes to grant to proposals that help at-risk students.

(3) A request for proposal must include or otherwise direct applicants to the performance framework that the authorizer has developed for choice school oversight and evaluation in accordance with 20-11-109.

(4) A request for proposal must include the criteria that will guide the authorizer's decision to approve or deny a choice school proposal.

(5) A request for proposal must include clear and detailed questions designed to gauge an applicant's capacity to establish and operate a successful choice school, as well as guidelines concerning the format and content of an applicant's response to the request for proposal.

(6) A request for proposal must require applicants to describe thoroughly the following essential elements of their proposed choice school proposal:

(a) an executive summary;

(b) the mission and vision of the proposed choice school, including identification of the targeted student population and the community the school hopes to serve;

(c) the location or geographic area proposed for the choice school;

(d) the grades to be served each year for the full term of the charter contract;

(e) minimum, planned, and maximum enrollment each year for the term of the charter contract;

(f) evidence of need and community support for the proposed choice school;

(g) background information on the founding governing board members and, if identified, the proposed school leadership and management team;

(h) the proposed choice school's proposed calendar and sample daily schedule;

(i) a description of the academic program, including identification of the planned standardized assessment to formally measure student achievement on an annual basis;

(j) a description of the proposed choice school's instructional design, including the type of learning environment, class size and structure, curriculum overview, and teaching methods;

(k) the proposed choice school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically challenged, and gifted students, including but not limited to compliance with applicable laws and regulations;

(l) a description of cocurricular or extracurricular programs, if any, and how the programs will be funded and delivered;

(m) plans and timelines for student recruitment and enrollment, including lottery procedures;

(n) the proposed choice school's student discipline policies, including those for special education students;

(o) an organizational chart that clearly presents the proposed choice school's organizational structure, including lines of authority and reporting between the governing board, staff, related bodies such as advisory bodies or parent and teacher councils, and any external organizations that may play a role in managing the school;

(p) a clear description of the roles and responsibilities for the governing board, the proposed choice school's leadership and management team, and other entities shown in the organizational chart;

(q) a staffing chart for the proposed choice school's first year and a staffing plan for the term of the charter contract;

(r) plans for recruiting and developing school leadership and staff;

(s) the proposed choice school's leadership and teacher employment policies, including performance evaluation plans;

(t) proposed governing bylaws;

(u) explanations of any partnerships or contractual relationships central to the proposed choice school's operations or mission;

(v) the proposed choice school's plans for providing transportation, food service, and all other significant operational or ancillary services, if any;

(w) opportunities and expectations for parent involvement;

(x) a detailed school startup plan identifying tasks, timelines, and responsible individuals;

(y) a description of the proposed choice school's financial plan and policies, including financial controls and audit requirements;

(z) a description of the insurance coverage the proposed choice school will obtain;

(aa) startup and 5-year budgets with clearly stated assumptions;

(bb) startup and first-year cash flow projections with clearly stated assumptions;

(cc) evidence of anticipated fundraising contributions, if claimed in the proposal; and

(dd) a sound facilities plan, including backup or contingency plans, if appropriate.

(7) In the case of a proposal to establish a choice school by converting an existing traditional public school to choice school status, a request for proposal must also require the applicants to demonstrate support for the proposed choice school conversion by a petition signed by a majority of teachers or a majority of the local school board and a petition signed by a majority of parents of students in the existing traditional public school.

(8) In the case of a proposal to establish a virtual choice school, a request for proposal must additionally require the applicants to describe the proposed school's system of course credits and how the school will:

(a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and

(c) conduct parent-teacher conferences.

(9) In the case of a proposed choice school that intends to contract with an education service provider for substantial educational services, management services, or both, a request for proposal must additionally require the applicants to:

(a) provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(b) provide documentation setting forth:

(i) the proposed duration of the service contract;

(ii) the roles and responsibilities of the governing board, the school staff, and the education service provider;

(iii) the scope of services and resources to be provided by the education service provider;

(iv) performance evaluation measures and timelines;

(v) a compensation structure, including clear identification of all fees to be paid to the education service provider;

(vi) methods of contract oversight and enforcement;

(vii) investment disclosure; and

(viii) conditions for renewal and termination of the contract; and

(c) disclose and explain any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

(10) In the case of a choice school proposal from an applicant that currently operates one or more schools in any state or nation, a request for proposal must additionally require the applicant to provide evidence of past performance and current capacity for growth.

(11) If a choice school proposal does not contain the elements required in this section, the authorizer may consider the proposal incomplete and return the proposal to the applicant without following the process described in subsection (12).

(12) In reviewing and evaluating choice school proposals, authorizers shall employ procedures, practices, and criteria consistent with nationally recognized principles and standards for authorizing. The proposal review process must include thorough evaluation of each written choice school proposal, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each proposal.

(13) In deciding whether to approve choice school proposals, authorizers shall:

(a) grant approval only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful choice school;

(b) base decisions on documented evidence collected through the proposal review process; and

(c) follow proposal review and approval policies and practices that are transparent and are based on merit and avoid conflicts of interest or any appearance of conflict.

(14) (a) The authorizer shall approve or deny a choice school proposal within 60 days after the filing of the proposal, except that the commission has up to 120 days if more than three proposals have been submitted to the commission within 30 days. The commission shall notify the applicant of the expected timeline for approval or denial.

(b) The authorizer shall adopt by resolution all choice school proposal approval or denial decisions in an open meeting of the authorizer's governing body.

(c) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed pursuant to 20-11-112.

(d) For any choice school proposal denial, the authorizer shall clearly state for the public record the reasons for denial. A denied applicant may subsequently reapply to that authorizer or apply to any other authorizer in the state.

(e) Within 10 days of taking action to approve or deny a choice school proposal, the authorizer shall report its decision to the commission. The authorizer shall provide a copy of the report to the applicant at the same time that the report is submitted to the commission. The report must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all of the procedural requirements and proposal elements set forth in this section.

(15) An applicant may submit a proposal for a particular choice school to only one authorizer at a time.

History: En. Sec. 9, Ch. 513, L. 2023.

20-11-112. Charter contract — terms. (1) An initial charter contract must be granted for a term of 5 operating years, commencing on the community choice school's first day of operation. An approved choice school may delay its opening for 1 school year to plan and prepare for the school's opening. If the school requires an opening delay of more than 1 school year, the school shall request an extension from its authorizer. The authorizer may grant or deny the extension depending on the school's circumstances.

(2) Within 45 days of approval of a choice school proposal, the authorizer and the governing board of the approved choice school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the choice school will be judged and the administrative relationship between the authorizer and the choice school, including each party's rights and duties.

(3) The performance provisions of the charter contract may be refined or amended by mutual agreement after the choice school is operating and has collected baseline achievement data for its enrolled students.

(4) The charter contract for a full-time virtual community choice school must include a description and agreement regarding the methods by which the school will:

(a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and

(c) conduct parent-teacher conferences.

(5) The charter contract must be signed by the president of the authorizer's governing body and the president of the choice school's governing board. Within 10 days of executing a charter contract, the authorizer shall submit to the commission written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

(6) A community choice school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the authorizer's governing body.

(7) Authorizers may establish reasonable pre-opening requirements or conditions to monitor the startup progress of a newly approved choice school to ensure that the school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

History: En. Sec. 10, Ch. 513, L. 2023.

20-11-113 through 20-11-115 reserved.

20-11-116. Enrollment. (1) (a) A community choice school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a choice school.

(c) A choice school may limit admission to students within a given age group or grade level.

(d) A choice school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A choice school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the choice school shall select students through a lottery.

(2) A traditional public school converting to a choice school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

(3) (a) A choice school shall give enrollment preference to students who were enrolled in the choice school the previous school year and to siblings of students already enrolled in the choice school. An enrollment preference for returning students and siblings excludes those students from entering a lottery.

(b) A choice school may give enrollment preference to children of a choice school's employees and governing board, limited to no more than 10% of the school's total student population.

(4) This section does not preclude the formation of a community choice school for the purpose of serving students with disabilities, students of the same gender, students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend a school, the choice school shall select students through a lottery.

(5) If a student who was previously enrolled in a choice school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the choice school.

(6) A traditional school district shall provide or publicize to parents and the general public information about choice schools as an enrollment option within the district's physical, geographical boundaries to the same extent and through the same means that the district provides and publicizes information about traditional public schools in the district.

(7) An authorizer may not restrict the number of students a choice school may enroll. The capacity of the choice school must be determined annually by its governing board in conjunction with the authorizer and in consideration of the choice school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

(8) If the choice school is the only public school in a town, the choice school must give preference to enrolling pupils residing in the town or within 5 miles of the school if the next closest public school is more than 10 miles away from the student's residence.

History: En. Sec. 11, Ch. 513, L. 2023.

20-11-117. Community choice school performance and renewal. (1) The performance provisions within the charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each choice school. The performance framework must include indicators, measures, and metrics for, at a minimum:

(a) student academic proficiency;

(b) student academic growth;

(c) achievement gaps in both proficiency and growth between major student subgroups;

(d) attendance;

(e) recurrent enrollment from year to year;

(f) postsecondary readiness;

(g) financial performance and sustainability; and

(h) governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(2) Each choice school, in conjunction with its authorizer, shall set annual performance targets designed to help each school meet applicable federal, state, and authorizer expectations.

(3) (a) The contract performance framework must include rigorous, valid, and reliable indicators proposed by a choice school to evaluate its performance that are consistent with the purposes of this part.

(b) The authorizer shall collect and analyze data from each choice school it oversees in accordance with the performance framework.

(c) Multiple schools operating under a single charter contract or overseen by a single governing board shall report their performance as separate, individual schools. Each school must be held independently accountable for its performance.

(4) (a) An authorizer shall monitor the performance and legal compliance of the choice schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer has the authority to conduct or require oversight activities that do not unduly inhibit the autonomy granted to choice schools but that enable the authorizer to fulfill its responsibilities under this part, including conducting appropriate inquiries and investigations consistent with the intent of this part, and to adhere to the terms of the charter contract. Required oversight activities may not encumber the choice school financially and may be appealed by the choice school through the commission.

(b) Each authorizer shall annually publish and provide as part of its annual report to the commission a performance report for each choice school it oversees, within the performance framework set forth in the charter contract and 20-11-112. The authorizer may require each choice school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.

(c) In the event that a choice school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the choice school of the perceived problem and provide a reasonable opportunity for the school to remedy the problem.

(d) An authorizer may take appropriate corrective action or exercise sanctions short of revocation in response to apparent deficiencies in choice school performance or legal compliance. The action or sanctions may include, if warranted, requiring a choice school to develop and execute a corrective action plan within a specified timeframe.

(5) (a) A charter contract may be renewed for successive 5-year terms, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each choice school. An authorizer may grant renewal with specific conditions for necessary improvement to a choice school.

(b) No later than June 30 of each year, the authorizer shall issue a choice school performance report and charter renewal application guide to any choice school whose charter contract will expire the following year. The performance report must summarize the choice school's performance record to date, based on the data required by this part and the charter contract, and must provide notice of any weaknesses or concerns perceived by the authorizer concerning the choice school that may jeopardize renewal if not promptly rectified. The choice school shall respond to the performance report and submit any corrections or clarifications within 90 days.

(6) The renewal application guide must, at a minimum, provide an opportunity for the choice school to:

(a) present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) describe improvements undertaken or planned for the choice school; and

(c) detail the choice school's plans for the next charter contract term.

(7) The renewal application guide must include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, based on the performance framework set forth in the charter contract and consistent with this part.

(8) (a) No later than February 1 of each year, the governing board of a community choice school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guide issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than 30 days after the filing of the renewal application.

(b) Every authorizer shall, when considering charter contract renewal:

(i) base its decision on evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(ii) ensure that the data used in making renewal decisions is available to the choice school and to the public; and

(iii) provide a public report summarizing the basis for each decision.

History: En. Sec. 12, Ch. 513, L. 2023.

20-11-118. Charter contract revocation and school closure or charter contract nonrenewal. (1) A charter contract may be subject to nonrenewal or revocation if the authorizer determines that the community choice school:

(a) committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this part or the charter contract and from which the choice school was not exempted;

(b) failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) failed to meet public safety standards; or

(d) failed to meet generally accepted standards of fiscal management.

(2) An authorizer shall develop revocation and nonrenewal processes that:

(a) provide the charter contract holders with timely notification of the prospect of revocation or nonrenewal and of the reasons for the possible closure;

(b) allow the charter contract holders a reasonable amount of time in which to prepare a response;

(c) provide the charter contract holders an opportunity to submit documents and testimony at a hearing to challenge the rationale for the closure recommendation and in support of the continuation of the school;

(d) allow the charter contract holders to be represented by counsel and call witnesses on their behalf;

(e) permit the recording of the proceedings; and

(f) provide for a final determination conveyed in writing to the charter contract holders.

(3) If an authorizer revokes or denies renewal of a charter contract, the authorizer shall clearly state, by resolution of its governing body, the reasons for the revocation or nonrenewal.

(4) Within 10 days of taking action to renew, not renew, or revoke a charter contract, the authorizer shall report to the commission the action taken and at the same time shall provide a copy of the report to the choice school. The report must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all the requirements set forth in this part. The authorizer's decision is appealable to the commission in writing within 30 days of the commission's receipt of the authorizer's report.

(5) (a) Prior to a choice school closure, an authorizer shall develop a choice school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this part. The protocol must specify responsible parties, transition and closure timelines, and a delineation of the respective duties of the choice school and the authorizer.

(b) The authorizer shall oversee the closure and work with the closing choice school to ensure a smooth and orderly closure and transition for students and parents.

(c) In the event of a choice school closure for any reason, the nonrestricted distributable assets of the choice school must be distributed first to satisfy outstanding payroll obligations for employees of the choice school, then to creditors of the choice school, then to resident school districts of students previously attending the closed choice school on a prorated per-pupil basis, and then to the state general fund. If the assets of the choice school are insufficient to pay all obligations, the prioritization of the distribution of assets may be determined by a court of law.

(d) If a closing choice school was converted from an existing traditional public school, the closing choice school is not responsible for any financial obligation or debt of the previously existing traditional public school unless the choice school assumed the debt or obligation at the time of conversion.

(6) Transfer of a charter contract, and of oversight of that choice school from one authorizer to another before the expiration of the charter contract term, may occur only if the authorizer violates the provisions of 20-11-108 or by special petition to the commission by a choice school or its authorizer. The commission shall consider a petition for transfer on a case-by-case basis and may grant transfer requests in response to special circumstances and to evidence that the transfer would serve the best interests of the community choice school's students.

History: **En. Sec. 13, Ch. 513, L. 2023.**

20-11-119. Community choice school operation and autonomy. (1) (a) A community choice school must be a nonprofit education organization.

(b) A choice school is subject to all federal laws and authorities as provided in this part or arranged by charter contract with the choice school's authorizer consistent with applicable laws, rules, and regulations.

(c) Except as provided in this part, a choice school is not subject to the provisions of Title 20 or any state or local rule, regulation, policy, or procedure relating to traditional public schools within an applicable traditional local school district.

(d) For the purposes of the public employee retirement system and the teacher retirement system under Title 19, choice schools are not "employers" and choice school employees are not "employees" as those terms are defined in 19-2-303 and 19-20-101.

(e) A single governing board may hold one or more charter contracts. A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each choice school that is part of a charter contract is separate and distinct from any other choice school.

(f) The founding governing board of a choice school may apply for and operate with a charter contract for a period up to 3 years before holding an election. The founding board shall ensure an elected governing board is in place within 3 years of the school commencing operations. The governing board must be elected by a process outlined in the choice school bylaws. The election process must include the following requirements:

(i) the qualified electors consist of parents and guardians of students enrolled in the school and the choice school's employees. The qualified electors shall nominate and vote for candidates for the governing board on a cycle outlined in the choice school's bylaws.

(ii) if the number of nominees is equal to the number of vacancies, no election is required;

(iii) if the number of nominees is greater than the number of vacancies, the election must be decided by the qualified electors as part of the next regular school election; and

(iv) the terms of board members must be staggered to ensure continuity on the governing board.

(2) A choice school may only be created within the geographical boundaries of a third-class elementary district, as described in 20-6-201, or a third-class high school district, as described in 20-6-301, if:

(a) the choice school is being converted from an existing public school;

(b) the traditional third-class school district elects to establish a community choice school;

(c) the traditional third-class district elects to convert a grade or grades to a choice school from an existing school;

(d) the choice school is a tribal choice school;

(e) the choice school is a virtual community choice school; or

(f) the governing board of the choice school has received approval, by majority vote, of a memorandum of understanding from the third-class school district's board of trustees.

(3) Each community choice school shall function as a local educational agency. A choice school is responsible for meeting the requirements of a local educational agency under applicable federal, state, and local laws, including those relating to special education.

(4) For purposes of special education, a community choice school shall serve as its own local education agency. A choice school is responsible for special education services at the school, including identification and service provisions, and is responsible for meeting the needs of enrolled students with disabilities.

(5) A choice school has all the powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) to receive and disburse funds for school purposes;

(b) to secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;

(c) to contract with an education service provider for the management and operation of the choice school only if the school's governing board retains oversight authority over the school;

(d) to incur debt in reasonable anticipation of the receipt of public or private funds;

(e) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(f) to solicit and accept gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

(g) to acquire real property, for use as its facility or facilities, from public or private sources; and

(h) to sue and be sued in its own name.

(6) (a) A choice school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.

(b) The powers, obligations, and responsibilities set forth in the charter contract may not be delegated or assigned by either party except as otherwise specifically provided in this part.

(7) (a) A choice school is subject to the same federal civil rights, health, and safety requirements applicable to other public schools in the state except as otherwise specifically provided in this part.

(b) The governing board shall establish graduation requirements and may award degrees and issue diplomas.

(c) A governing board is subject to and shall comply with state open meeting and public records laws pursuant to Title 2, chapters 3 and 6.

(d) A choice school shall establish purchasing procedures that include a competitive bidding process for purchases or contracts exceeding $80,000.

(8) (a) A community choice school's teachers are exempt from state teacher certification requirements provided in Title 20, chapter 4.

(b) Employees in choice schools have the same rights and privileges as other public school employees except as otherwise provided in this part.

(c) Teachers and other school personnel, as well as governing board members, are subject to criminal history record checks and fingerprinting requirements.

(d) Community choice school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees. However, a choice school may not interfere with laws and other applicable rules protecting the rights of employees to organize and to be free from discrimination.

(9) A choice school's location is determined exclusively by its governing board and only encompasses the property lines of where the school exists as a tenant, guest, or owner of the property. The community choice school is a separate public education entity authorized by and under control of the state of Montana. A choice school is separate from the traditional local school district in which it is physically located and is exempt from Title 20 except as provided in this part.

History: **En. Sec. 14, Ch. 513, L. 2023.**

20-11-120 through 20-11-123 reserved.

20-11-124. Funding of choice schools. (1) It is the intent of the legislature that a choice school receive operational funding on a per-pupil basis that is equitable with the per-pupil funding within the general fund of a choice school student's resident school district.

(2) (a) A choice school student's enrollment must be included in the student's resident district enrollment counts for ANB purposes only. By March 1, prior to a choice school's first year of operation, the authorizer shall provide an estimate of a choice school's enrollment broken down by resident school districts to the superintendent of public instruction for review and possible adjustment. The ANB determined by the superintendent must be used for budgeting and BASE funding program purposes for the upcoming school year.

(b) A choice school must have a separate basic entitlement included in the general fund budget of the school district in which the choice school is physically located. The authorizer of the choice school shall determine the choice school's need for a basic entitlement and, not later than February 1, communicate to the superintendent of public instruction the percentage, not to exceed 80%, of the basic entitlement amount under 20-9-306 to be included in the located school district's general fund budget for the ensuing school fiscal year for the choice school.

(3) The county treasurer of the county in which a choice school is physically located shall establish a general fund and other necessary funds for the choice school separate from the funds of school districts of the county.

(4) (a) The superintendent of public instruction shall:

(i) reduce a resident school district's BASE aid payment in August through May by an amount equal to 10% of the student amount for the resident school district multiplied by the number of full-time equivalent resident students enrolled in a choice school that were included in the resident school district's general fund budget calculations; and

(ii) by the fifth day of each month from September through June of the school fiscal year, distribute to the county treasurer in which the choice school is located the amount determined under subsection (4)(a)(i) for deposit in the choice school's general fund.

(b) The superintendent of public instruction shall reduce the BASE aid payment of a school district in which a choice school is physically located by an amount equal to 10% of the choice school's basic entitlement amount pursuant to subsection (2)(b) in August through May and by the fifth day of each month from September through June of the school fiscal year and distribute the money to the county treasurer for deposit in the choice school's general fund.

(5) A choice school experiencing significant enrollment increases must receive additional funding in an equitable manner with that received by school districts under Title 20, chapter 9.

(6) (a) A choice school may not charge tuition and may charge only fees that may be imposed by traditional public schools in the state.

(b) The out-of-district attendance and tuition laws under Title 20, chapter 5, part 3, do not apply to a student enrolled in a choice school located outside the student's district of residence.

(7) A choice school may obligate the choice school to indebtedness and is solely responsible for those debts. A choice school is not responsible for any debt service obligations that exist in the school district in which the choice school is physically located.

(8) Nothing in this part may be construed to prohibit any person, organization, business, or foundation from providing funding or other assistance for the establishment or operation of a choice school. The governing board of a choice school is authorized to accept gifts or donations of any kind made to the choice school and to expend or use the gifts or donations in accordance with the conditions prescribed by the donor. A gift or donation may not be accepted if the gift or donation is subject to a condition that is contrary to any provision of law or term of the charter contract.

(9) Money received by a choice school from any source and remaining in the choice school's accounts at the end of a budget year must remain in the choice school's accounts for use by the choice school in subsequent years.

(10) For the purposes of this section, the following definitions apply:

(a) "Resident school district" means the school district in which a choice school student resides.

(b) "Student amount" means the sum of:

(i) the per-ANB rate for the total data-for-achievement payment rate under 20-9-306;

(ii) the per-ANB rate for the total Indian education for all payment rate under 20-9-306;

(iii) 140% of the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and

(iv) the applicable per-ANB maximum rate established in 20-9-306 for the choice school student multiplied by the ratio, rounded to the nearest 1/100 and not to exceed 1.00, of the resident school district's adopted general fund budget to its maximum general fund budget in the prior year.

History: **En. Sec. 15, Ch. 513, L. 2023.**

20-11-125. Community choice school access to district facilities and land. (1) A choice school has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or an unused portion of a public school facility or property located in a school district from which the choice school draws its students.

(2) A choice school may negotiate and contract at or below fair market value with a school district, the governing body of a college or university or community college, or any other public entity or for-profit or nonprofit private entity for the use of a facility for a school building.

History: **En. Sec. 16, Ch. 513, L. 2023.**

20-11-126. Community choice school account. (1) There is a community choice school account in the state special revenue fund provided for in 17-2-102 and administered by the commission. The purpose of the account is for the receipt and expenditure of gifts, grants, legacies, devises, and donations given specifically to support the creation and operation of the Montana community choice schools and commission.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying choice schools as determined by the commission. Money in the account is derived from a private nonstate source and is payable by the commission without an appropriation pursuant to 17-8-101.

(3) A gift or donation made directly to a specific choice school or schools is not prohibited by this section.

History: **En. Sec. 17, Ch. 513, L. 2023.**

CHAPTERS 12 THROUGH 14
RESERVED

CHAPTER 15
COMMUNITY COLLEGE DISTRICTS

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Part 1
General Provisions

20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term "community college district" means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction open to all people, subject to uniform regulations as determined by the trustees. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101; amd. Sec. 1, Ch. 74, L. 2017.

20-15-102. Community college districts — name and corporate powers. A community college district shall be known as "Community College District of ...., Montana". In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-15-103. Supervision and coordination by board of regents. Pursuant to Article X, section 9, of the Montana constitution, the community college districts are assigned to the board of regents of higher education for supervision and coordination as public educational institutions outside the Montana university system. The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;

(3) formulate and put into effect general policies for the supervision and coordination of community college districts;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents' authority to supervise and coordinate and the trustees' authority to administer and control community colleges; and

(5) on approval of a proposition to organize a community college district, provide a recommendation to the legislature pursuant to 20-15-209.

History: (1), (5)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; (3), (4)En. Sec. 25, Ch. 392, L. 1979; amd. Sec. 10, Ch. 351, L. 2021.

Cross-References

Board of Regents established, Art. X, sec. 9, Mont. Const.; 2-15-1505.
Powers and duties of Board of Regents generally, 20-25-301.

20-15-104. Pecuniary interest and letting contracts. (1) It is unlawful for any community college district trustee to:

(a) have a pecuniary interest, either directly or indirectly, in the erection of any community college building in the trustee's district;

(b) have a pecuniary interest, either directly or indirectly, in furnishing or repairing a community college building;

(c) be in any manner connected with the furnishing of supplies for the maintenance of the college; or

(d) receive or accept any compensation or reward for services rendered as trustee, except as provided in this section.

(2) Except for the letting of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, including construction or installation of conservation measures pursuant to an energy performance contract, the board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing, or other work or supplies is for less than $80,000.

(b) Whenever the proposed contract costs are more than $80,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county in which the area of the district lies, calling for bids to perform the work or furnish the supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979; amd. Sec. 11, Ch. 162, L. 2005; amd. Sec. 1, Ch. 68, L. 2015.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Penalty for violation of school laws, 20-1-207.

20-15-105. Courses of instruction — tuition and fees. (1) A community college district shall provide instruction in transfer, career and technical, and adult postsecondary education, subject to the approval of the board of regents of higher education. The board of trustees of a community college district may, in its discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) The board of trustees of a community college district may prescribe other fees it considers necessary to maintain courses, taking into consideration other funds available under law for the support of courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119; amd. Sec. 11, Ch. 351, L. 2021.

Cross-References

Vocational education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Charges for tuition — waivers, 20-25-421.

Capacity of minors to borrow for education, 41-1-303.

20-15-106. Retirement systems for employees, teachers, and administrators. (1) Teachers and administrators of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system pursuant to the provisions of Title 19, chapter 20.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system pursuant to Title 19, chapters 2 and 3.

History: En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979; amd. Sec. 18, Ch. 282, L. 2009.

Cross-References

Applicability of public employees' retirement system, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

20-15-107. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.

Cross-References

School property, Title 20, ch. 6, part 6.
Trustees to execute all contracts, 20-9-213.
Building fund to be credited when property sold, 20-9-508.

20-15-108. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.

Cross-References

Regulation of award of degrees — penalty, 20-25-107.
Authority of Board of Regents to grant diplomas and degrees, 20-25-301.

20-15-109. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

History: En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.

Part 2
Organization and Trustees

20-15-201. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary or K-12 districts of one or more counties.

(2) The taxable value of the proposed area is at least $10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104; amd. Sec. 12, Ch. 351, L. 2021.

Cross-References

Elementary districts, Title 20, ch. 6, part 2.

20-15-202. Petition for organization of community college district. (1) When the area of a proposed community college district satisfies the specified requirements under 20-15-201, the registered electors of the area may petition the board of county commissioners to call an election for the organization of a community college district. The petition must be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

(2) When the area to be included within the proposed community college district lies in more than one county, the qualified electors of the proposed area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 20% of the qualified electors of the proposed district that lies within that county.

(3) The petition must include:

(a) a legal description or map of the proposed community college district boundaries;

(b) the proposed name of the community college district;

(c) a description of the educational services the proposed community college district will offer;

(d) an estimate of the number of persons expected to use the services within the district; and

(e) a notice that the creation of a community college district may, with subsequent voter approval, result in the levying of property taxes to support:

(i) a portion of the operating costs of the community college district; and

(ii) the repayment of bonds issued as authorized by law.

History: En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105; amd. Sec. 13, Ch. 351, L. 2021.

Cross-References

Registration of electors, Title 13, ch. 2.
Qualification and registration of electors, Title 20, ch. 20, part 3.

20-15-203. Community college district organization election — notice — proposition statement. (1) On a determination that a petition complies with the provisions of 20-15-202, the board of county commissioners of each county in which the proposed community college district lies shall give notice of elections to be held within the boundaries of the proposed district for the purposes of:

(a) determining whether a community college district should be organized; and

(b) electing trustees as provided under the provisions of this part.

(2) The elections must be conducted in accordance with Title 13, chapter 1, part 5.

(3) At the election the proposition for organization must be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of..... (elementary or K-12 districts must be listed by county), State of Montana, a community college district for the offering of transfer, career and technical, and adult postsecondary education, to be known as the Community College District of....., Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the county election administrator on the..... day of....., 20...? The creation of a community college district may, with subsequent voter approval, result in the levying of property taxes to support:

(1) a portion of the operating costs of the community college district; and

(2) the repayment of bonds issued as authorized by law.

☐ FOR organization.

☐ AGAINST organization.

History: En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106; amd. Sec. 56, Ch. 51, L. 1999; amd. Sec. 212, Ch. 49, L. 2015; amd. Sec. 14, Ch. 351, L. 2021.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-204. Election of trustees — districts from which elected — terms of office. (1) Pursuant to 20-15-208, the county election administrator shall conduct the election of trustees of the proposed community college district at the same time as the election to be held for the approval of the community college district's organization.

(2) If the county election administrator determines that the proposal to organize a new community college district has carried pursuant to 20-15-209, the county election administrator shall determine which candidates have been elected trustees.

(3) Seven trustees must be elected at large, except that if there is in the proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees must be elected at large from the remainder of the proposed community college district. Should any high school district or part of a high school district within the community college district have more than 50% of the population of the proposed district, then four trustees must be elected from that high school district or part of a high school district and the remaining trustees must be elected at large from the remainder of the proposed community college district.

(4) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes must be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107; amd. Sec. 213, Ch. 49, L. 2015; amd. Sec. 1, Ch. 69, L. 2019; amd. Sec. 15, Ch. 351, L. 2021.

20-15-205. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.

20-15-206. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.

20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district must be given by the county election administrator in accordance with 13-1-108.

History: En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110; amd. Sec. 214, Ch. 49, L. 2015.

20-15-208. Conduct of community college district elections. (1) An election for the organization of the community college district and the concurrent election of trustees for the proposed community college district must be conducted by the county election administrator.

(2) For any community college district election held subsequent to the initial elections under subsection (1), the community college district's board of trustees is the governing body for the election and the county election administrator shall conduct the election.

(3) If a proposed or existing community college district is within the boundaries of more than one county, the county election administrator of the county with the highest number of qualified electors in the proposed or existing community college district shall conduct the election.

(4) A community college district election must be conducted in accordance with Title 13, chapter 1, part 5.

History: En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111; amd. Sec. 215, Ch. 49, L. 2015; amd. Sec. 16, Ch. 351, L. 2021.

Cross-References

School elections generally, Title 20, ch. 20.
Election expenses, 20-20-107.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast. The county election administrator shall determine whether the proposal has received the majority of the votes cast for each county within the proposed district and shall certify the results. Prior to the legislative session immediately following an affirmative community college district organization election:

(a) by August 15, the trustees-elect of the proposed community college district shall submit to the board of regents an analysis of the educational and workforce needs in the proposed community college district and planned course offerings to meet the needs; and

(b) by December 1, the regents shall provide a recommendation to the legislature based solely on an evaluation of the analysis in subsection (1)(a).

(2) Authority to approve a new community college district lies solely with the legislature. The legislature shall, by joint resolution at its next regular session, consider creation of the proposed community college district. If the legislature approves a new community college district, the board of county commissioners of each county in which the proposed community college district is located shall make an order declaring the community college district organized and cause a copy of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of the new district is located. The board of county commissioners shall notify the board of regents of the district's organization.

(3) Within 30 days of the date of the organization order, the board of trustees of the community college district shall set a date and notice an organization meeting. The notification must designate a temporary presiding officer and secretary for the purposes of organization.

History: En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112; amd. Sec. 321, Ch. 56, L. 2009; amd. Sec. 216, Ch. 49, L. 2015; amd. Sec. 2, Ch. 69, L. 2019; amd. Sec. 17, Ch. 351, L. 2021.

20-15-210. Qualification and organization of board of trustees. (1) Newly elected members of the board of trustees of the community college district must be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees must be organized by the election of a presiding officer and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-212.

History: **En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979; amd. Sec. 8, Ch. 260, L. 1995.**

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.
Declaration in lieu of oath, 1-6-104.
Oath of office, 20-1-202.

20-15-211 through 20-15-218 reserved.

20-15-219. Qualifications for office of trustee — declaration of candidacy. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) A declaration of candidacy must be submitted to the county election administrator within the time period specified in 20-3-305(2). If there are different terms to be filled, the term for which the candidate is filing must be indicated on the declaration.

History: **En. Sec. 3, Ch. 392, L. 1979; amd. Sec. 322, Ch. 56, L. 2009; amd. Sec. 1, Ch. 251, L. 2013; amd. Sec. 217, Ch. 49, L. 2015.**

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.
☐ .... List the names of the candidates for the 3-year term with a vacant square in front of each name.
Vote for (indicate number to be elected) for a 2-year term.
☐ .... List the names of the candidates for the 2-year term with a vacant square in front of each name.
Vote for (indicate number to be elected) for a 1-year term.
☐ .... List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

History: **En. Sec. 4, Ch. 392, L. 1979.**

20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-20-105(1). The election must be conducted in accordance with the election provisions of this title whenever the provisions are made applicable to community college districts. Pursuant to 20-15-208, the elections must be conducted by the county election administrator on the order of the board of trustees of the community college district. The order must be transmitted to the appropriate trustees at least 85 days prior to the regular school election day.

(2) Notice of the community college district trustee election must be given as provided in 13-1-108.

(3) If trustees are elected other than at large throughout the entire district, then only those qualified electors within the area from which the trustee or trustees are to be elected may cast their ballots for the trustee or trustees from that area.

(4) Candidates for the office of trustee shall file their declarations of candidacy with the county election administrator within the time period specified in 20-3-305(2).

(5) All costs incident to election of the community college trustees must be borne by the community college district, including one-half of the compensation of the judges for the school elections.

History: **En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979; amd. Sec. 31, Ch. 130, L. 2005; amd. Sec. 2, Ch. 251, L. 2013; amd. Sec. 218, Ch. 49, L. 2015.**

Cross-References

School elections, Title 20, ch. 20.
Regular school election day and special school elections, 20-20-105.
Election expenses, 20-20-107.

20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all of the certified results of the election from the county election administrator, the then-qualified members of the board of trustees of the community college district shall tabulate the results received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at the election.

(2) (a) A person who receives a certificate of election as a community college trustee may not assume the trustee position until the person has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular school election.

(3) After a person has qualified for a trustee position, the person shall hold the position for the term of the position and until a successor has been elected or appointed and has been qualified.

History: **En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; amd. Sec. 5, Ch. 392, L. 1979; amd. Sec. 323, Ch. 56, L. 2009; amd. Sec. 219, Ch. 49, L. 2015.**

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.
Declaration in lieu of oath, 1-6-104.
Oath of office, 20-1-202.

20-15-223. Vacancies. (1) A community college trustee position is vacant whenever the incumbent:

(a) dies;

(b) resigns; or

(c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: **En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.**

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular school election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district must be given notice by the coordinator of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their members as presiding officer and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The presiding officer and secretary of the trustees of the community college district shall serve until the next organization meeting. The presiding officer shall preside at all meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to the office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on the day of the month the trustees may set. The presiding officer and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in its judgment necessity requires the meeting. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees constitutes a quorum for the transaction of business, except that a contract may not be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership votes in favor of the action.

(4) A member of the board of trustees must receive mileage, as provided for in 2-18-503, for the distance necessarily traveled in going to and returning from the place of the meeting and the member's place of residence each day that the trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979; amd. Sec. 324, Ch. 56, L. 2009; amd. Sec. 220, Ch. 49, L. 2015.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Disrupting meeting as disorderly conduct, 45-8-101.

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

(a) have general control and supervision of the community college;

(b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(c) grant certificates and degrees to the graduates of the community college;

(d) keep a record of their proceedings;

(e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;

(f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(g) have general control of all receipts and disbursements of the community college;

(h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(j) call the elections of the district in accordance with the school election chapter of this title;

(k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

History: **En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979; amd. Sec. 221, Ch. 49, L. 2015.**

Cross-References

Applicability of public employees' retirement system, 19-3-403.
Teachers' retirement system, Title 19, ch. 20.
School elections, Title 20, ch. 20.
Governmental code of fair practices, Title 49, ch. 3.

20-15-226. Personal liability of trustees. (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

History: **En. Sec. 9, Ch. 392, L. 1979.**

Cross-References

Penalty for violation of school laws, 20-1-207.
Official misconduct, 45-7-401.

20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend the trustee from the trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

History: **En. Sec. 6, Ch. 392, L. 1979; amd. Sec. 325, Ch. 56, L. 2009.**

20-15-228. Grounds for removal. A community college trustee may be removed if the trustee:

(1) moves the trustee's residence from the applicable community college district;
(2) is no longer a registered elector of the community college district under the provisions of 20-20-301;
(3) is absent from the district 60 consecutive days;
(4) fails to attend three consecutive meetings of the trustees without reasonable cause;
(5) fails to perform responsibilities in accordance with 20-15-226; or
(6) ceases to have the capacity to hold office.

History: **En. Sec. 7, Ch. 392, L. 1979; amd. Sec. 326, Ch. 56, L. 2009.**

Cross-References

Residence — rules for determining, 1-1-215.

20-15-229. Audit of district. A community college district is subject to audit in the same manner as a state agency. A community college district shall contract for an audit with a private accounting firm, subject to approval of the legislative auditor. A community college district is responsible for paying for any portion of contract costs not appropriated by the legislature. Each community college district shall provide a copy of its audit report to the legislative auditor.

History: **En. Sec. 14, Ch. 392, L. 1979; amd. Sec. 2, Ch. 110, L. 2021.**

Cross-References

Legislative Audit Act, Title 5, ch. 13.

20-15-230 reserved.

20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. The election must be held on the next school election day that, pursuant to 13-1-504, is at least 85 days after the order for the election.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election must be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election under 20-15-203, except that the board of trustees of the community college shall act as the governing body for the election and the election may not include an election of the board of trustees of the community college.

(4) The proposition on the ballot must be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast at the election. On receipt of the certified results of the election from the county election administrator, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution must be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, on such filing, the area to be annexed shall then become a part of the community college district.

History: En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125; amd. Sec. 4, Ch. 575, L. 1983; amd. Sec. 1, Ch. 474, L. 1985; amd. Sec. 222, Ch. 49, L. 2015.

20-15-232 through 20-15-240 reserved.

20-15-241. Community college service regions — creation. (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region, as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a regular school election day in accordance with 20-15-208; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (2)(d), a written plan must be made available that:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region and estimates the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values. The plan may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as a revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

History: **En. Sec. 1, Ch. 575, L. 1983; amd. Sec. 29, Ch. 495, L. 2001; amd. Sec. 223, Ch. 49, L. 2015.**

Cross-References

Tax levy for community college service region, 20-15-314.

Part 3
Finance

20-15-301. Sources of financing for and types of capital expenditures. (1) The board of trustees of a community college district may:

(a) purchase, lease, build, enlarge, alter, or repair school buildings and dormitories;

(b) furnish and equip buildings;

(c) purchase sites for buildings; and

(d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of 20-15-327 and chapter 9, part 4, of this title.

(2) The board of trustees of a community college district may borrow money for the purposes of 20-15-327 and this section and repay the obligations from the various revenues of the college as described in 20-15-327.

History: **En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122; amd. Sec. 1, Ch. 488, L. 1989; amd. Sec. 1, Ch. 421, L. 2017.**

Cross-References

School bonds, Title 20, ch. 9, part 4.

20-15-302. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.**

20-15-303. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.**

20-15-304. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: **En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.**

20-15-305. Adult education tax levy. A community college district created prior to January 1, 2021, is considered a district for the purposes of adult education and under the provisions for adult education may, subject to 15-10-420, levy a tax for the support of its adult education program when the superintendent of public instruction approves the program.

History: **En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129; amd. Sec. 116, Ch. 584, L. 1999; amd. Sec. 124, Ch. 574, L. 2001; amd. Sec. 18, Ch. 351, L. 2021.**

Cross-References

Adult education, Title 20, ch. 7, part 7.

20-15-306. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.**

20-15-307. Repealed. Sec. 8, Ch. 495, L. 1981.

History: **En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.**

20-15-308. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: **En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.**

20-15-309. Biennial budgeting. The board of trustees of a community college district shall submit enrollment projections and other data necessary for calculating the state appropriation under 20-15-310 to the board of regents by August 1 immediately preceding each regular legislative session. By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director, the legislative fiscal analyst, and to the legislature in accordance with 5-11-210.

History: En. Sec. 1, Ch. 495, L. 1981; amd. Sec. 57, Ch. 261, L. 2021; amd. Sec. 4, Ch. 348, L. 2021; amd. Sec. 19, Ch. 351, L. 2021.

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.
Completion, filing, and delivery of final budgets, 20-9-134.
Emergency budget petitions, 20-9-161, 20-9-163.
Emergency budgets, 20-9-165.

20-15-310. Appropriation — definitions. (1) As used in 20-15-328 and this section, the following definitions apply:

(a) "Adjusted base" means the state appropriation to a community college in the base year:

(i) (A) plus the payment made to the community college for the base year pursuant to 20-15-328(3)(a); or

(B) minus the FTE increase funding factor divided by the FTE decrease funding factor times the payment made to the state for the base year pursuant to 20-15-328(3)(b); and

(C) minus any one-time-only legislative appropriations and appropriations for auditing purposes.

(ii) The amount calculated in subsection (1)(a)(i) is then multiplied by the inflationary factor for the second year of the current biennium.

(b) "Base year" means the first year of the current biennium.

(c) "Concurrent enrollment" means the form of dual enrollment through which a high school student receives instruction in a community college course from a high school instructor.

(d) "CTE FTE" means the FTE derived from students in courses determined by the commissioner of higher education to be career and technical education, based on national standard course classifications. For the purposes of the community college funding formula, FTE generated from a dual enrollment CTE course must be included in the calculation of CTE FTE and not in the concurrent enrollment or early college FTE categories.

(e) "Dual enrollment" means the circumstance in which a high school student is enrolled in both the student's high school and in a community college.

(f) "Early college" means the form of dual enrollment through which a high school student receives instruction in a community college course from a faculty member of the community college.

(g) "FTE" or "full-time equivalent" means the total number of undergraduate resident student credit hours in an academic year divided by 30.

(h) "FTE categories" means CTE FTE, general education FTE, the FTE derived from concurrent enrollment, and the FTE derived from early college. For the purposes of the community college funding formula, FTE generated from a dual enrollment CTE course must be included in the calculation of CTE FTE and not in the concurrent enrollment or early college FTE categories.

(i) "FTE decrease funding factor" means a dollar figure for each year of the ensuing biennium that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(j) "FTE increase funding factor" means a dollar figure for each year of the ensuing biennium that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(k) "FTE weighting factor" means a multiplier that is applied to changes in resident FTE in each of the FTE categories and that is determined by the legislature and must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(l) "General education FTE" means the FTE derived from nondual enrollment students in courses determined by the commissioner of higher education to not be career and technical education, based on national standard course classifications.

(m) "Inflationary factor" means the percentage calculated pursuant to 20-9-326, not to exceed 3% and subject to final determination by the legislature as specified in the appropriations act appropriating funds to the community colleges for each biennium.

(n) "Weighted FTE" means, for each FTE category, the FTE in that FTE category multiplied by the corresponding FTE weighting factor.

(2) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(3) The state general fund appropriation for each community college must be determined as follows:

(a) For the first year of the next biennium, multiply the adjusted base by the inflationary factor for the first year of the next biennium, and to this number for each FTE category add the result of multiplying:

(i) any change in the projected weighted FTE changes for the first year of the next biennium from the actual weighted FTE in the base year; and

(ii) the FTE decrease funding factor or the FTE increase funding factor as appropriate for the first year of the next biennium.

(b) For the second year of the next biennium, multiply the adjusted base by the inflationary factor for the first year of the next biennium, multiply this result by the inflationary factor for the second year of the next biennium, and to this number for each FTE category add the result of multiplying:

(i) any change in the projected weighted FTE changes for the second year of the next biennium from the actual weighted FTE in the base year; and

(ii) the FTE decrease funding factor or the FTE increase funding factor as appropriate for the second year of the next biennium.

History: En. Sec. 2, Ch. 495, L. 1981; amd. Sec. 1, Ch. 494, L. 1989; amd. Sec. 1, Ch. 493, L. 2007; amd. Sec. 1, Ch. 3, L. 2013; amd. Sec. 16, Ch. 336, L. 2017; amd. Sec. 1, Ch. 175, L. 2019; amd. Sec. 5, Ch. 348, L. 2021; amd. Sec. 15, Ch. 53, L. 2025; amd. Sec. 2, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 15, Ch. 53, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 739, L. 2025. Amendment effective July 1, 2025.

20-15-311. Funding sources. (1) The annual current fund budget of a community college district created on or after January 1, 2021, may be financed from the following sources:

(a) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;

(b) the state general fund appropriation pursuant to 20-15-310;

(c) the operating levy pursuant to 20-15-316;

(d) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(e) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.

(f) income from a political subdivision that is designated a community college service region under 20-15-241.

(2) The annual current fund budget of a community college district created prior to January 1, 2021, may be financed from the following sources:

(a) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;

(b) the state general fund appropriation pursuant to 20-15-310;

(c) subject to 15-10-420, a mandatory mill levy on the community college district;

(d) pursuant to 20-9-501, a retirement levy;

(e) pursuant to 2-9-212, a levy for employer contributions to group benefits plans;

(f) subject to 15-10-420, the adult education levy authorized under 20-15-305;

(g) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425;

(h) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(i) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.

(j) income from a political subdivision that is designated a community college service region under 20-15-241.

History: **En. Sec. 3, Ch. 495, L. 1981; amd. Sec. 3, Ch. 575, L. 1983; amd. Sec. 117, Ch. 584, L. 1999; amd. Sec. 30, Ch. 495, L. 2001; amd. Sec. 125, Ch. 574, L. 2001; amd. Sec. 21, Ch. 351, L. 2021.**

20-15-312. Review and approval of annual operating budget. (1) Annually by August 15, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be submitted in a manner prescribed by the board of regents and include at a minimum:

(a) detailed revenue and expenditure estimates for the current fiscal year and actual revenue and expenditure reports for the most recently completed fiscal year in all funds and subfunds;

(b) a list of any property tax levies for the current year, displaying the amount to be raised in dollars and mills and any applicable statutory limitations; and

(c) the percentage of the proposed current fund budget funded by local property taxes.

(2) The board of regents shall review and approve the proposed total operating budget and all its components, ensuring the proposed budget complies with applicable laws and accounting standards. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

History: **En. Sec. 4, Ch. 495, L. 1981; amd. Sec. 2, Ch. 494, L. 1989; amd. Sec. 4, Ch. 243, L. 1997; amd. Sec. 2, Ch. 493, L. 2007; amd. Sec. 22, Ch. 351, L. 2021.**

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.
Completion, filing, and delivery of final budgets, 20-9-134.
Emergency budget petitions, 20-9-161, 20-9-163.
Emergency budgets, 20-9-165.

20-15-313. Tax levy. (1) By the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance, subject to statutory conditions and limitations, any district levy authorized by law.

(2) When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: **En. Sec. 5, Ch. 495, L. 1981; amd. Sec. 118, Ch. 584, L. 1999; amd. Sec. 25, Ch. 152, L. 2011; amd. Sec. 6, Ch. 62, L. 2013; amd. Sec. 23, Ch. 351, L. 2021.**

Cross-References

Property tax levies, Title 15, ch. 10.

20-15-314. Tax levy for community college service region. Subject to 15-10-420, a governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies other than 15-10-420. The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the revenue generated must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenue must be transmitted to the participating community college district.

History: **En. Sec. 2, Ch. 575, L. 1983; amd. Sec. 119, Ch. 584, L. 1999.**

Cross-References

Community college service regions, 20-15-241.

20-15-315. Funding for new community college district. (1) The board of trustees of a newly created community college district shall, by August 1 immediately preceding the regular legislative session at which the district will first seek a state appropriation, submit to the board of regents enrollment projections for each year of the ensuing biennium and an annual budget pursuant to 20-15-312 for the first year of the ensuing biennium.

(2) The state general fund appropriation for the district must be determined as follows:

(a) For the first year of the ensuing biennium:

(i) divide the total adjusted base of all community colleges by the total FTE of all community colleges in the base year;

(ii) multiply the result of subsection (2)(a)(i) by the inflationary factor for the second year of the current biennium and then multiply by the inflationary factor for the first year of the ensuing biennium; and

(iii) multiply the result of subsection (2)(a)(ii) by the projected weighted resident FTE of the new community college for the first year of the ensuing biennium.

(b) For the second year of the ensuing biennium:

(i) multiply the number calculated in subsection (2)(a)(ii) by the inflationary factor for the second year of the ensuing biennium; and

(ii) multiply the result of subsection (2)(b)(i) by the projected weighted resident FTE of the new community college for the second year of the ensuing biennium.

(3) (a) After each fiscal year of the first biennium the new community college district receives a state appropriation, the commissioner of higher education shall determine the fiscal impacts that would have resulted had the actual FTE for that fiscal year been used to determine that fiscal year's state appropriation and determine any overpayment or underpayment to the community college for that fiscal year.

(b) At the end of each odd fiscal year, the commissioner shall calculate the net underpayment or overpayment resulting from the underpayment or overpayment of the prior fiscal year and current fiscal year determined under subsection (2) and:

(i) the commissioner shall distribute any net underpayment determined under this subsection (3) to a community college from the community college FTE adjustment account by October 15 of the current calendar year; or

(ii) a community college receiving a net overpayment determined under this subsection (3) shall pay a fee equal to the overpayment to the commissioner by October 15 of the current calendar year for deposit in the community college FTE adjustment account.

(4) After the first biennium a new community college district receives a state appropriation, the state appropriation for the district in subsequent bienniums must be determined as described in 20-15-310.

History: **En. Secs. 1, 27(3), Ch. 351, L. 2021.**

20-15-316. Operating levy for community college districts created on or after January 1, 2021. (1) This section applies only to community college districts created on or after January 1, 2021. The legislature intends that a newly created community college district have a single unified operating district levy to support the district's current fund.

(2) Subject to 15-10-420, a community college district may impose an operating levy to support the district's current unrestricted subfund under the provisions of this section.

(3) A newly created community college district may impose an operating levy under this section only after voter approval for a new mill levy as described in 15-10-425.

(4) A community college district may exceed the mill levy limit under 15-10-420 for the operating levy only after voter approval for increasing a mill levy as described in 15-10-425.

History: **En. Sec. 2, Ch. 351, L. 2021.**

20-15-317 through 20-15-320 reserved.

20-15-321. Current unrestricted subfund cash reserve. At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the current unrestricted subfund end-of-the-year cash balance as a cash reserve for the purpose of paying current unrestricted subfund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the current unrestricted subfund cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

History: En. Sec. 3, Ch. 488, L. 1989; amd. Sec. 24, Ch. 351, L. 2021.

20-15-322 reserved.

20-15-323. Definition of emergency for budgeting purposes. As used in this chapter, unless the context clearly indicates otherwise, the term "emergency" for the purpose of community college budgeting means:

(1) the destruction or impairment of any community college district property necessary to the maintenance of the district, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering the property unfit for its present use;

(2) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(3) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(4) any other reason of similar consequence that has been approved by the board of regents upon petition by the trustees of the district.

History: En. Sec. 51, Ch. 767, L. 1991.

20-15-324. Resolution for emergency budget — petition to board of regents. (1) Whenever the trustees of a community college district decide that an emergency exists, they may adopt a resolution proclaiming the emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding the meeting. The emergency resolution must also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place the board will meet for the purpose of considering and adopting an emergency budget for the funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in 20-9-161(1) through (3), they shall petition the board of regents for permission to adopt a resolution of emergency. The petition must set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet the emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and any other information required by the board of regents. The petition must be signed by each trustee.

(3) The board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may adopt a resolution of emergency and take all other steps required for the adoption of an emergency budget. Approval of a petition by the board of regents authorizes the board of trustees to initiate emergency budget proceedings by resolution and does not relieve the trustees of the necessity of complying with the requirements of the emergency budgeting laws.

History: En. Sec. 52, Ch. 767, L. 1991.

20-15-325. Emergency budget limitation, preparation, and adoption procedures. (1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be determined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency, and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the board of regents.

History: En. Sec. 53, Ch. 767, L. 1991; amd. Sec. 9, Ch. 260, L. 1995.

20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget. (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(b), the board of county commissioners shall at the time all other district and county taxes are fixed and levied, levy a tax on the taxable value of all taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: En. Sec. 54, Ch. 767, L. 1991; amd. Sec. 10, Ch. 260, L. 1995; amd. Sec. 116, Ch. 42, L. 1997; amd. Sec. 120, Ch. 584, L. 1999; amd. Sec. 126, Ch. 574, L. 2001.

20-15-327. Revenue-producing facilities — powers of board of trustees. The board of trustees of a community college district may:

(1) purchase, construct, equip, or improve the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings, activity centers, and other facilities;

(e) other revenue-producing facilities as determined by the board of trustees; and

(f) other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the college at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons. The charges, admissions, and fees are not considered tuition and may be collected from any or all students.

(3) hold the net income derived from the operation of the facilities and the charges, admissions, and fees collected and devote the revenue from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as the revenue has not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of the facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for uses, at times, for periods, and at rates that in the board of trustees' judgment will be consistent with the full use of the facilities for academic purposes and will add to the revenue available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for the facilities;

(7) borrow money for any purpose stated in this section, including, if considered desirable by the board of trustees, the payment of interest on the money borrowed for a facility during the construction of the facility and for 1 year after construction and the creation of a reserve for the payment of bond principal and interest;

(8) make purchases on a time or installment basis;

(9) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which must be fully negotiable notwithstanding any limitation on the source of payment of the bonds, notes, or securities, or fully registered bonds or bonds registered as to ownership of principal only;

(10) pledge for the payment of the purchase price of a facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the board of trustees for all students;

(c) other income in the form of:

(i) gifts, bequests, contributions, or federal grants of funds, including the proceeds or income from grants of lands or other real or personal property;

(ii) receipts from athletic and other contests, exhibitions, and performances; and

(iii) collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions; and

(d) the sum of subsections (10)(a) through (10)(c) in part or in whole;

(11) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, including land; and

(12) issue and sell or exchange bonds for the refunding of any outstanding bonds or other obligations issued for revenue-producing facilities.

History: **En. Sec. 2, Ch. 421, L. 2017.**

20-15-328. Adjustments based on actual weighted FTE — special revenue account — statutory appropriation — annual transfer. (1) There is a community college FTE adjustment account in the state special revenue fund provided for in 17-2-102. The account is statutorily appropriated, as provided in 17-7-502, to the commissioner of higher education for the purposes described in this section.

(2) Beginning at the end of fiscal year 2025, at the end of each fiscal year the commissioner of higher education, utilizing the FTE decrease funding factor and the FTE increase funding factor as appropriate, shall determine the fiscal impacts resulting from the weighted FTE projections on which that fiscal year's state appropriation to a community college was based, pursuant to 20-15-310, and the fiscal impacts that would have resulted had the actual weighted FTE for that fiscal year been used to determine that fiscal year's state appropriation and shall determine any overpayment or underpayment to the community college for that fiscal year.

(3) At the end of each fiscal year, the commissioner shall calculate the underpayment or overpayment determined under subsection (2) and:

(a) the commissioner shall distribute any underpayment determined under this subsection (3) to a community college from the community college FTE adjustment account by July 15 of the current calendar year; or

(b) a community college receiving a overpayment determined under this subsection (3) shall pay a fee equal to the overpayment to the commissioner by July 15 of the current calendar year for deposit in the community college FTE adjustment account.

(4) (a) By August 1 each year, after overpayments have been received and underpayments have been made, any funds remaining in the account must be transferred into the general fund.

(b) If the amount of underpayments exceeds the amount of overpayments, the state treasurer shall transfer the difference of the payments from the general fund to this account for providing underpayments pursuant to subsection (3).

History: En. Sec. 6, Ch. 348, L. 2021; amd. Sec. 3, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 739, L. 2025. Amendment effective July 1, 2025.

Part 4
Relationship to Other Laws

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

20-15-401. Purpose. It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to ensure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

History: En. Sec. 1, Ch. 392, L. 1979.

20-15-402. Precedence of community college chapter. Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

History: En. Sec. 2, Ch. 392, L. 1979.

20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-401, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-205, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 50-71-112, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4(k) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

History: En. Sec. 12, Ch. 392, L. 1979; amd. Sec. 6, Ch. 495, L. 1981; amd. Sec. 2, Ch. 570, L. 1981; amd. Sec. 76, Ch. 575, L. 1981; amd. Sec. 27, Ch. 465, L. 1983; amd. Sec. 6, Ch. 15, L. 1985; amd. Sec. 72, Ch. 370, L. 1987; amd. Sec. 5, Ch. 512, L. 1987; amd. Sec. 58, Ch. 587, L. 1987; amd. Sec. 14, Ch. 10, Sp. L. July 1992; amd. Sec. 43, Ch. 525, L. 1993; amd. Sec. 8, Ch. 539, L. 1993; amd. Sec. 1, Ch. 310, L. 1997; amd. Sec. 7, Ch. 522, L. 1997; amd. Sec. 2, Ch. 18, L. 1999; amd. Sec. 14, Ch. 27, L. 2009; amd. Sec. 19, Ch. 282, L. 2009; amd. Sec. 36, Ch. 286, L. 2009; amd. Sec. 3, Ch. 84, L. 2015.

20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of Title 20, chapter 7, part 7;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, 20-9-461, 20-9-464, and 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206.

History: En. Sec. 13, Ch. 392, L. 1979; amd. Sec. 7, Ch. 495, L. 1981; amd. Sec. 1, Ch. 270, L. 1983; amd. Sec. 73, Ch. 370, L. 1987; amd. Sec. 2, Ch. 488, L. 1989; amd. Sec. 49, Ch. 767, L. 1991; amd. Sec. 11, Ch. 260, L. 1995; amd. Sec. 49, Ch. 423, L. 1995; amd. Sec. 117, Ch. 42, L. 1997; amd. Sec. 21, Ch. 219, L. 1997; amd. Sec. 12, Ch. 94, L. 2007.

CHAPTER 16
VOCATIONAL-TECHNICAL CENTER SYSTEM
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Finance (Repealed)

Part 1
General Provisions
(Repealed)

20-16-101. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 1, Ch. 658, L. 1987.

20-16-102. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 2, Ch. 658, L. 1987.

20-16-103. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 4, Ch. 658, L. 1987.

20-16-104. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7710 by Sec. 413, Ch. 5, L. 1971; (amd. Sec. 11, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 11, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7710; amd. Sec. 3, Ch. 598, L. 1979; amd. Sec. 15, Ch. 658, L. 1987; Sec. 20-7-312, MCA 1985; redes. 20-16-104 by Sec. 33, Ch. 658, L. 1987.

20-16-105. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 3, Ch. 658, L. 1987.

20-16-106. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7707 by Sec. 410, Ch. 5, L. 1971; (amd. Sec. 8, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 8, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7707; amd. Sec. 14, Ch. 598, L. 1979; amd. Sec. 14, Ch. 658, L. 1987; Sec. 20-7-311, MCA 1985; redes. 20-16-106 by Sec. 33, Ch. 658, L. 1987.

20-16-107. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 5, Ch. 658, L. 1987.

20-16-108. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7715 by Sec. 418, Ch. 5, L. 1971; R.C.M. 1947, 75-7715; amd. Sec. 15, Ch. 598, L. 1979; amd. Sec. 16, Ch. 658, L. 1987; Sec. 20-7-314, MCA 1985; redes. 20-16-108 by Sec. 33, Ch. 658, L. 1987.

20-16-109. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 28, Ch. 658, L. 1987.

Part 2
Finance
(Repealed)

20-16-201. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7706 by Sec. 409, Ch. 5, L. 1971; (amd. Sec. 6, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 6, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7706; amd. Sec. 16, Ch. 598, L. 1979; amd. Sec. 2, Ch. 682, L. 1979; amd. Sec. 17, Ch. 658, L. 1987; Sec. 20-7-322, MCA 1985; redes. 20-16-201 by Sec. 33, Ch. 658, L. 1987.

20-16-202. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; (amd. Sec. 10, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 10, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 26, Ch. 266, L. 1977; R.C.M. 1947, 75-7709; amd. Sec. 4, Ch. 598, L. 1979; amd. Sec. 1, Ch. 27, Sp. L. June 1986; amd. Sec. 18, Ch. 658, L. 1987; Sec. 20-7-324, MCA 1985; redes. 20-16-202 by Sec. 33, Ch. 658, L. 1987.

20-16-203. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 6, Ch. 598, L. 1979; amd. Sec. 20, Ch. 658, L. 1987; Sec. 20-7-327, MCA 1985; redes. 20-16-203 by Sec. 33, Ch. 658, L. 1987.

20-16-204. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7208 by Sec. 347, Ch. 5, L. 1971; R.C.M. 1947, 75-7208; amd. Sec. 1, Ch. 205, L. 1979; amd. Sec. 18, Ch. 598, L. 1979; amd. Sec. 3, Ch. 682, L. 1979; amd. Sec. 19, Ch. 658, L. 1987; Sec. 20-7-325, MCA 1985; redes. 20-16-204 by Sec. 33, Ch. 658, L. 1987.

20-16-205. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7713 by Sec. 416, Ch. 5, L. 1971; R.C.M. 1947, 75-7713; amd. Sec. 1, Ch. 223, L. 1979; amd. Sec. 19, Ch. 598, L. 1979; amd. Sec. 21, Ch. 658, L. 1987; Sec. 20-7-332, MCA 1985; redes. 20-16-205 by Sec. 33, Ch. 658, L. 1987.

20-16-206. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-7714 by Sec. 417, Ch. 5, L. 1971; R.C.M. 1947, 75-7714; amd. Sec. 20, Ch. 598, L. 1979; amd. Sec. 4, Ch. 682, L. 1979; amd. Sec. 22, Ch. 658, L. 1987; Sec. 20-7-333, MCA 1985; redes. 20-16-206 by Sec. 33, Ch. 658, L. 1987; amd. Sec. 1, Ch. 47, L. 1989.

20-16-207. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 27, Ch. 658, L. 1987.

CHAPTERS 17 THROUGH 19
RESERVED

CHAPTER 20
SCHOOL ELECTIONS

Part 1 — General Provisions

20-20-101. Repealed.
20-20-102. Precedence of school election provisions.
20-20-103. Election by ballot.
20-20-104. Forms.
20-20-105. Regular school election day and special school elections — limitation — exception.
20-20-106. Poll hours.
20-20-107. Election expenses.
20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster.
20-20-109. Election judges — qualifications — training.

Part 2 — Calling of and Preparation for School Elections

20-20-201. Calling of school election.
20-20-202. Repealed.
20-20-203. Resolution for poll hours, polling places, and judges.
20-20-204. Election notice.

Part 3 — Qualification and Registration of Electors

20-20-301. Qualifications of elector.
20-20-302. Repealed.

20-20-303. Elector challenges.
20-20-304 through 20-20-310 reserved.
20-20-311. Voter registration.
20-20-312. Listing of registered electors — late registration.
20-20-313. Delivery and charge for lists of registered electors.

Part 4 — Election Procedure

20-20-401. Trustees' election duties — ballot certification.
20-20-402. Clerk of election judges and appointment for absent judge.
20-20-403 through 20-20-409 reserved.
20-20-410. Oath of judges.
20-20-411. Conduct of election.
20-20-412. Repealed.
20-20-413. Repealed.
20-20-414. Repealed.
20-20-415. Trustees to canvass votes.
20-20-416. Certificate of election.
20-20-417. Request for county election administrator to conduct election.
20-20-418. Tie votes.
20-20-419 reserved.
20-20-420. School recount board — duties — composition.
20-20-421. Voting systems.

Chapter Cross-References

General election provision, Title 13, ch. 1.
Registration of electors, Title 13, ch. 2.
Voting systems, Title 13, ch. 17.
Election and campaign practices and criminal provisions, Title 13, ch. 35.
Control of campaign practices, Title 13, ch. 37.
Bribery in official and political matters, 45-7-101.
Threats and other improper influence in official and political matters, 45-7-102.
Exemption of electors from arrest, 46-6-102.
Basic political rights, Title 49, ch. 1, part 2.

Part 1
General Provisions

20-20-101. Repealed. Sec. 262, Ch. 49, L. 2015.
History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.
History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

20-20-103. Election by ballot. All school elections shall be by ballot.
History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

Cross-References
Mail ballot elections prohibited, 13-19-104.

20-20-104. Forms. The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.
History: En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.

20-20-105. Regular school election day and special school elections — limitation — exception. (1) Except as provided in subsection (5), the first Tuesday after the first Monday in May of each year is the regular school election day.

(2) Except as provided in subsections (4) and (5), a proposition requesting an increase in the over-BASE budget levy under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(3) Subject to the provisions of subsection (2), other school elections may be conducted at times determined by the trustees.

(4) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (2), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322(6).

(5) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order an election on a date other than the regular school election day but prior to August 1 in order for the electors to consider a proposition requesting an increase in the over-BASE budget levy under 20-9-353.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404; amd. Sec. 8, Ch. 644, L. 1987; amd. Sec. 8, Ch. 514, L. 1999; amd. Sec. 1, Ch. 192, L. 2007; amd. Sec. 224, Ch. 49, L. 2015; amd. Sec. 9, Ch. 396, L. 2023; amd. Sec. 8, Ch. 640, L. 2023.

20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision and at the same polling place pursuant to 13-1-305, the polls must be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls must be opened and closed at the times required for the general or primary election under 13-1-106.

(4) Once opened, the polls must be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll must be closed immediately.

History: En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979; amd. Sec. 2, Ch. 57, L. 1985; amd. Sec. 2, Ch. 372, L. 1987; amd. Sec. 225, Ch. 49, L. 2015.

Cross-References

Time of opening and closing of polls for all elections, 13-1-106.

20-20-107. Election expenses. (1) All expenses necessarily incurred in the matter of holding school elections must be paid out of the school funds of the district, except when the expenses are by law to be shared by a community college district for which the district is conducting an election.

(2) The trustees shall pay the election judges of a school election at least the state or federal minimum wage, whichever is greater, for each hour of service in connection with the election, including the number of hours required to attend training pursuant to 20-20-109.

(3) Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 per calendar year.

History: En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420; amd. Sec. 54, Ch. 297, L. 2009.

Cross-References

Conduct of community college elections, 20-15-208.

Trustee election upon order of trustees, 20-15-221.

20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster. If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

History: En. Sec. 1, Ch. 153, L. 1981.

20-20-109. Election judges — qualifications — training. (1) (a) Except as provided in subsection (1)(b), election judges must be qualified registered electors of the school district in which they serve.

(b) If a county election administrator agrees to conduct an election pursuant to 20-20-417, election judges must be qualified registered electors in the county in which they serve.

(2) An election judge may not be:

(a) the candidate;

(b) an ascendant, descendant, brother, or sister of a candidate; or

(c) the spouse of the candidate or of any of the individuals listed in subsection (2)(b).

(3) School election judges must meet the training and certification requirements of 13-4-203.

History: En. Sec. 55, Ch. 297, L. 2009; amd. Sec. 1, Ch. 422, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 422, L. 2025. Amendment effective May 5, 2025.

Cross-References

Instruction of judges — training materials, 13-4-203.

Part 2
Calling of and Preparation for School Elections

20-20-201. Calling of school election. (1) (a) At least 145 days before a regular school election, the trustees of a district or other entity or official authorized by law to call a school election shall call the school election by resolution, stating the date and purpose of each election and whether, pursuant to 13-19-202, the election is requested to be by mail.

(b) The trustees or other entity described in subsection (1)(a) may amend the resolution provided for in subsection (1)(a) until 70 days prior to the regular school election. This subsection (1)(b) may not be construed to affect the ballot certification deadline concerning the certification of the official wording for each ballot issue as provided in 20-20-401.

(c) At least 70 days prior to a special election, the trustees of a district or other entity or official authorized by law to call a school election shall call the special election by resolution, stating the date and purpose of each election and whether, pursuant to 13-19-202, the election is requested to be by mail.

(2) To enable the county election administrator to manage voter registration and prepare the lists of registered electors:

(a) the resolution calling for a school election must be transmitted to the county election administrator no later than 3 days after the resolution is passed; and

(b) if the election is to be conducted by mail, the school clerk must also transmit to the county election administrator a copy of the written plan required under 13-19-205.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979; amd. Sec. 327, Ch. 56, L. 2009; amd. Sec. 226, Ch. 49, L. 2015; amd. Sec. 3, Ch. 652, L. 2025; amd. Sec. 4, Ch. 689, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 652, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 689, L. 2025. Amendment effective October 1, 2025.

Cross-References

Election Administrator, 13-1-301.
Mail ballot elections prohibited, 13-19-104.
Conduct of elections, 20-3-306.
County high school unification, 20-6-312.
Opening junior high school when high school district operates county high school, 20-6-505.
Trustees' authority to acquire and dispose of sites and buildings, 20-6-603.
Selection of school sites, approval election, and lease of state lands, 20-6-621.
Election to authorize issuance of school district bonds, 20-9-421.
Purpose and authorization of a building reserve fund by election, 20-9-502.
Joint interstate school agreements, 20-9-705.
Duties of County Transportation Committee, 20-10-132.

20-20-202. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls must be open before noon;

(b) establish the polling places for the election, using the established polling places for general elections within the district wherever possible; and

(c) appoint at least three judges for each polling place.

(2) There must be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place so that the boundaries for each polling place are coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place must be included in the notice for the election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979; amd. Sec. 3, Ch. 57, L. 1985; amd. Sec. 56, Ch. 297, L. 2009.

Cross-References

Election precincts, Title 13, ch. 3.
Designation of polling place, 13-3-105.
Election judges, Title 13, ch. 4.

20-20-204. Election notice. (1) (a) When the trustees of a district call a school election, they shall give notice of the election not less than 10 days or more than 40 days before the election by:

(i) publishing a notice in a newspaper of general circulation if there is one in the district;

(ii) posting notices in three public places in the district; and

(iii) posting notice on the district's website, if the district has an active website, for 10 days prior to the election.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication or broadcast of the school election notice by any recognized media organization in the district, the trustees may cause the supplemental notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

(a) the date and polling places of the election;

(b) the hours that the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position;

(e) where and how absentee ballots may be obtained; and

(f) where and how late registrants may obtain a ballot on election day.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

History: En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979; amd. Sec. 3, Ch. 372, L. 1987; amd. Sec. 3, Ch. 144, L. 1997; amd. Sec. 227, Ch. 49, L. 2015; amd. Sec. 16, Ch. 242, L. 2017.

Cross-References

Supplemental publication of notice by radio or television, 2-3-105 through 2-3-107.
Notice of school bond election by separate purpose, 20-9-427.

Part 3
Qualification and Registration of Electors

20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if the individual has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979; amd. Sec. 6, Ch. 539, L. 1987; amd. Sec. 328, Ch. 56, L. 2009.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.
Rules for determining residence, 1-1-215, 13-1-112, 13-1-113.

20-20-302. Repealed. Sec. 1, Ch. 208, L. 1983.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).

20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge must be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412; amd. Sec. 32, Ch. 130, L. 2005.

20-20-304 through 20-20-310 reserved.

20-20-311. Voter registration. Voter registration for school elections must be as provided in Title 13, chapter 2.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413; amd. Sec. 228, Ch. 49, L. 2015.

Cross-References

Registration of electors, Title 13, ch. 2.

20-20-312. Listing of registered electors — late registration. (1) After closing regular registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place must be prepared in the format of a precinct register book.

(2) An elector may register as provided in 13-2-304 to vote in a school election after the close of regular registration.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979; amd. Sec. 229, Ch. 49, L. 2015.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

Part 4
Election Procedure

20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 40 days before an election, the clerk of the district shall certify the ballot by preparing a certified list of the names of all candidates entitled to be on the ballot subject to 13-37-126 and certifying the official wording for each ballot issue. The candidates' names must appear on the ballot in accordance with 13-12-203. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979; amd. Sec. 2, Ch. 481, L. 1983; amd. Sec. 4, Ch. 372, L. 1987; amd. Sec. 4, Ch. 144, L. 1997; amd. Sec. 9, Ch. 514, L. 1999; amd. Sec. 230, Ch. 49, L. 2015; amd. Sec. 2, Ch. 214, L. 2015; amd. Sec. 4, Ch. 652, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 652, L. 2025. Amendment effective October 1, 2025.

Cross-References

Election supplies and ballots, Title 13, ch. 12.

20-20-402. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.

Cross-References

Election judges, Title 13, ch. 4.

20-20-403 through 20-20-409 reserved.

20-20-410. Oath of judges. Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 5, Ch. 372, L. 1987.

20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast the elector's vote.

History: En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979; amd. Sec. 329, Ch. 56, L. 2009.

Cross-References

Election procedure, Title 13, ch. 13.

20-20-412. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6416 by Sec. 152, Ch. 5, L. 1971; R.C.M. 1947, 75-6416(part).

20-20-413. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(1), (2).

20-20-414. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(3) thru (6).

20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Meetings and quorum, 20-3-322.

School bond elections — canvassing, 20-9-428.

20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, either by vote or by acclamation, the certificate must be issued to the elected trustee and the county superintendent designating the term of the trustee position to which the trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate must be issued to the official or public body that ordered the election within 25 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results must be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979; amd. Sec. 4, Ch. 132, L. 1999; amd. Sec. 2, Ch. 154, L. 2019.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Election of trustees, 20-3-301.

Qualification and oath of person receiving certificate, 20-3-307.

20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of a district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year. The request must be made by a resolution of the board of trustees.

(2) Whenever the county election administrator agrees to conduct a school election, the administrator shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401; and

(b) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request and the county election administrator agrees to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

History: En. Sec. 1, Ch. 481, L. 1983; amd. Sec. 330, Ch. 56, L. 2009; amd. Sec. 231, Ch. 49, L. 2015.

Cross-References

County Election Administrator, 13-1-301.

20-20-418. Tie votes. If a tie vote occurs among the candidates for a school trustee position, the trustees shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 57, Ch. 297, L. 2009.

Cross-References

Casting of ballot, 13-10-301.

20-20-419 reserved.

20-20-420. School recount board — duties — composition. (1) There is a school recount board. If a school election requires a recount pursuant to 13-16-201, the school recount board shall perform the recount following the procedures for a recount board as provided in Title 13, chapter 16.

(2) (a) The school recount board must consist of three members of the board of trustees of the school district for which the school election took place.

(b) If there are more than three members of the board of trustees, the presiding officer of the board of trustees shall appoint three trustees to serve as school recount board members. If the presiding officer of the board of trustees is a candidate for an office or nomination for which votes are to be recounted, another trustee chosen by majority vote shall serve as the presiding officer for purposes of appointing the school recount board members.

(c) If one or more of the trustees appointed to the school recount board cannot serve or cannot attend when the school recount board meets, the presiding officer shall appoint one or more remaining trustees to serve. If there is an insufficient number of trustees to serve on the school recount board, the presiding officer may appoint the school district clerk or the clerk's designee or the county superintendent or the superintendent's designee to serve as the remaining member or members.

(d) A candidate for an office or nomination for which votes are to be recounted may not be a member of the school recount board.

(e) The school district clerk is secretary of the school recount board, and the board may appoint school district employees or hire any additional clerks as needed.

History: En. Sec. 1, Ch. 347, L. 2013.

20-20-421. Voting systems. Whenever a voting system, as defined in 13-1-101, is available to a district, the voting system may be used for a school election if the voting system has been approved pursuant to 13-17-101 and if the election administrator complies with the provisions of Title 13, chapter 17. In construing the provisions of that chapter, the "county governing body" and the "election administrator" are, for the purposes of this section, considered to refer to trustees and "county" is considered to refer to district.

History: En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979; amd. Sec. 77, Ch. 575, L. 1981; amd. Sec. 89, Ch. 414, L. 2003.

CHAPTERS 21 THROUGH 24
RESERVED

CHAPTER 25
UNIVERSITY SYSTEM

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Chapter Compiler's Comments

Montana University System Investigation Committee — Membership — Meetings: Chapter 646, L. 2025, required the formation of a committee to investigate any civil rights violations and acts of censorship committed by the Montana university system. The chapter was not codified because of its short duration. Effective July 1, 2025, and terminates December 31, 2026.

Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Board of Regents of Higher Education created, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Part 1
University System — General

20-25-101. Antidiscrimination. The Montana university system shall instruct all individuals on equal terms.

History: En. 75-8401 by Sec. 1, Ch. 2, L. 1971; R.C.M. 1947, 75-8401; amd. Sec. 331, Ch. 56, L. 2009.

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

20-25-102. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation may use the name "the Montana university system" or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding $500 or less than $100.

History: En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977; R.C.M. 1947, 75-8404.

20-25-103. Authority to accept gifts. On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

History: En. 75-8429 by Sec. 29, Ch. 2, L. 1971; R.C.M. 1947, 75-8429.

20-25-104. Supplementary conservation education in university system. (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.

(2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

History: En. 75-8803 by Sec. 59, Ch. 2, L. 1971; R.C.M. 1947, 75-8803.

20-25-105. Repealed. Sec. 8, Ch. 21, L. 1985.

History: En. 75-8804 by Sec. 60, Ch. 2, L. 1971; R.C.M. 1947, 75-8804.

20-25-106. Repealed. Sec. 4, Ch. 428, L. 1983.

History: En. 75-8805 by Sec. 61, Ch. 2, L. 1971; R.C.M. 1947, 75-8805.

20-25-107. Regulation of award of degrees — penalty. (1) No person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

(2) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.

(3) Violation of this section is a misdemeanor.

History: En. 75-8502 by Sec. 31, Ch. 2, L. 1971; R.C.M. 1947, 75-8502.

Cross-References

Penalty for violation of school laws, 20-1-207.

Community college not to grant baccalaureate degree, 20-15-108.

Penalty for misdemeanor when none specified, 46-18-212.

20-25-108. Research programs — powers of units. (1) The units of the system are authorized, singly or in cooperation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit. A unit or organization may:

(a) contract with private organizations, companies, firms, or individuals relative to research programs;

(b) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;

(c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(d) make agreements or cooperative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(e) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;

(f) accumulate, invest, and expend the funds and proceeds from research programs;

(g) acquire real and personal property reasonably required for research programs;

(h) not divert funds, proceeds, or real and personal property from the research programs; and

(i) not charge or obligate the state of Montana or the general funds or a unit or agency.

(3) The legislature declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.

History: En. 75-8801 by Sec. 57, Ch. 2, L. 1971; amd. Sec. 10, Ch. 343, L. 1977; R.C.M. 1947, 75-8801.

Cross-References

Contracts and agreements for research by state agencies, 90-1-107.

20-25-109. Authorized university system employee or individual activities. (1) A Montana university system employee who, as part of the employee's authorized work for the university system, conceives, creates, discovers, invents, or develops intellectual property may:

(a) if approved by the board of regents, own or be awarded equity interest or participation in the intellectual property; or

(b) if approved by the board of regents, serve as a member of the board of directors or other governing board of or as a director, officer, or employee of a business entity that:

(i) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of that intellectual property; or

(ii) shares an ownership interest in the intellectual property with the university system.

(2) An individual, at the request of and on behalf of the university system, may serve as a member of the board of directors or other governing board of a business entity that:

(a) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of the individual's intellectual property; or

(b) shares an ownership interest in the intellectual property with the university system.

(3) For purposes of this section, "intellectual property" means inventions, discoveries, and creations that may be eligible for copyright or patent. The term also includes other economic development activity of a proprietary nature, including but not limited to business practices, ideas, processes, or arrangements that may not be eligible for either patent or copyright but for which the possibility of profitable commercialization exists.

(4) An employee or individual included under the provisions of subsection (1) or (2) shall report the name of the business entity with which the employee or individual is affiliated to the commissioner of higher education and to the appropriate person within the unit of the university system at which the person is employed or on behalf of which the individual is serving.

(5) The provisions of 2-2-104, 2-2-105, 2-2-121, and 2-2-201 do not apply to this section.

History: En. Sec. 1, Ch. 379, L. 2001.

20-25-110. Student construction project — disclosure — immunity. (1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, "public education program" means a program operated by a public school or a public postsecondary institution.

History: **En. Sec. 1, Ch. 521, L. 2005.**

Part 2
University Units

20-25-201. Units constituting university system. The Montana university system is composed of the following units, each designated by its legal name:

(1) The university of Montana, with campuses at the following locations:
(a) Missoula;
(b) Butte;
(c) Dillon; and
(d) Helena.
(2) Montana state university, with campuses located at the following locations:
(a) Bozeman;
(b) Billings;
(c) Havre; and
(d) Great Falls.

History: **En. 75-8403 by Sec. 3, Ch. 2, L. 1971; R.C.M. 1947, 75-8403; amd. Sec. 1, Ch. 224, L. 1989; amd. Sec. 15, Ch. 308, L. 1995.**

20-25-202 through 20-25-204 reserved.

20-25-205. Purpose of university — law and forestry schools. (1) The university of Montana-Missoula shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.

(2) A law school is established at the university of Montana-Missoula.

(3) A forestry school is established at the university of Montana-Missoula.

History: **En. 75-8405 by Sec. 5, Ch. 2, L. 1971; R.C.M. 1947, 75-8405; amd. sec. 36, Ch. 308, L. 1995.**

Cross-References

Administrative rules distributed to university law library, 2-4-313.
Supreme Court opinions distributed to university law library, 3-2-604.
Justices of the Peace orientation course to be held at law school, 3-10-203.

20-25-206. Departments and courses of university of Montana-Missoula. (1) The departments of the university are:

(a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;

(b) a department of literature, science, and the arts, offering courses which shall include:

(i) mathematics, physical and natural sciences, with their application to the industrial arts;

(ii) languages, literature, history, and philosophy; and

(iii) other courses at the regents' discretion; and

(c) professional and technical departments.

(2) When the income of the university allows and demands require, the courses may form departments with a faculty and an appropriate title.

History: **En. 75-8406 by Sec. 6, Ch. 2, L. 1971; R.C.M. 1947, 75-8406; amd. sec. 36, Ch. 308, L. 1995.**

20-25-207. Bureau of government research — purpose — funding. (1) There is a bureau of government research at the university of Montana-Missoula. The purpose of the bureau is to facilitate research and publication in the area of state and local government and to maintain a liaison between political scientists and government officials through the exchange of information.

(2) The bureau of government research may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

History: En. Sec. 2, Ch. 443, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

20-25-208 through 20-25-210 reserved.

20-25-211. Montana technological university — purpose — fees for assays. (1) Montana technological university has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology", which is under the direction of the regents, is established at Montana technological university.

(3) The chancellor of Montana technological university may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The chancellor shall keep an account of the fees and pay them monthly to the treasurer for deposit to the college fund.

History: En. Secs. 7, 49, Ch. 2, L. 1971; R.C.M. 1947, 75-8407, 75-8608; amd. Sec. 16, Ch. 308, L. 1995; amd. Sec. 19, Ch. 3, L. 2019.

20-25-212. Bureau of mines and geology — purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems that the regents consider valuable to the people of Montana;

(9) communicate special information on Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the university system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of natural resources and conservation and make investments. These services are limited to the time available for the services after all other duties of the bureau of

mines and geology are served. Written reports must be made. Travel expenses incurred by the examiner must be paid, as provided for in 2-18-501 through 2-18-503, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or at Montana technological university after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the board of regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977; R.C.M. 1947, 75-8408; amd. Sec. 36, Ch. 308, L. 1995; amd. Sec. 51, Ch. 418, L. 1995; amd. Sec. 20, Ch. 3, L. 2019.

Cross-References

Membership on Board of Water Well Contractors, 2-15-3307.
Testing of coal production, 15-35-106.
Drilling data available to Bureau representative, 82-11-126.

20-25-213. Bureau director and assistants — duties. The director and assistants of the bureau of mines and geology shall:

(1) take an oath to perform all required services;

(2) guard all confidential information accumulated in their work;

(3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services until the knowledge is published and submitted to the people of Montana; and

(4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

History: En. 75-8409 by Sec. 9, Ch. 2, L. 1971; R.C.M. 1947, 75-8409.

Cross-References

Oath of office, 20-1-202.

20-25-214 through 20-25-220 reserved.

20-25-221. Montana state university-Bozeman — designation and purpose. (1) The land-grant university for the state of Montana, designated as “Montana state university-Bozeman”, is established at Bozeman under the provisions of the Morrill Act of 1862.

(2) Montana state university-Bozeman shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature, and arts, including military science, as well as professional programs in agriculture, engineering, and other fields as may be prescribed by the regents.

History: En. 75-8410 by Sec. 10, Ch. 2, L. 1971; R.C.M. 1947, 75-8410; amd. sec. 36, Ch. 308, L. 1995.

20-25-222. Agricultural experiment station — establishment and purpose. (1) There is established at the state university at Bozeman and under its direction an agricultural experiment station, by virtue of the Hatch Act approved by congress on March 2, 1887. The provisions, donations, and benefits contained in that act and all acts supplementary thereto or amendatory thereof are accepted and adopted by the state of Montana.

(2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations, and experiments relating to agriculture, natural resources, and rural life and to diffuse information thereby acquired among the people of Montana.

(3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

History: En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.

Cross-References

Experiment station defined, 20-1-101.
Advice to Department of Transportation regarding seeding, 60-2-208.
Duty of Department of Agriculture to cooperate with station, 80-1-102.
Funds for experiment station, 80-10-104.

20-25-223. Director of agricultural experiment station — duties. The director shall have the immediate direction, management, and control of the agricultural experiment station, subject to the general supervision, direction, and control of the regents and the president of the state university.

History: **En. Sec. 3, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.1.**

Cross-References

Membership appointment to Fertilizer Advisory Committee, 2-15-1516.

Duty to meet with Fertilizer Advisory Committee, 80-10-106.

20-25-224. Agricultural research centers. (1) The following agricultural research centers are established as a part of the agricultural experiment station:

(a) the central agricultural research center, located near Moccasin;

(b) the western agricultural research center, located near Corvallis;

(c) the northern agricultural research center, located near Havre;

(d) the southern agricultural research center, located near Huntley;

(e) the northwestern agricultural research center, located near Kalispell;

(f) the eastern agricultural research center, located near Sidney.

(2) All research centers shall be under the general supervision of the director of the agricultural experiment station.

History: **En. Sec. 4, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.2.**

20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana permanent fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of the fund.

(2) The total amount that may be used for purchase of lands for sites or experimental farms may not exceed 10% of the total amount accrued to the credit of the agricultural college Morrill permanent fund.

(3) Money apportioned from the endowment funds for the purchase of sites or experimental farms may not be applied directly or indirectly to the purchase, erection, preservation, or repair of any building.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

History: **En. 75-8606 by Sec. 47, Ch. 2, L. 1971; R.C.M. 1947, 75-8606; amd. Sec. 19, Ch. 281, L. 1983; amd. Sec. 14, Ch. 34, L. 2001.**

20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits of the act in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station must be the beneficiary of the funds in the act and shall use the funds only for the purposes provided in the act.

(c) The treasurer of Montana state university-Bozeman may receive all money appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and must receive and shall hold and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university-Bozeman may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of the act.

(c) The president may receive and expend the money in accordance with the provisions of the act and any agreements made pursuant to the act.

History: **(1)Ap. p. Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; Ap. p. Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; Sec. 75-8605, R.C.M. 1947; (2)En. Sec. 45, Ch. 2, L. 1971; Sec. 75-8604, R.C.M. 1947; R.C.M. 1947, 75-8603(1) thru (3), 75-8604, 75-8605(1)(b); amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 332, Ch. 56, L. 2009.**

20-25-227. Montana wool laboratory — designation and purpose. (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 5, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.3.

20-25-228. Wool laboratory funds and fees. (1) The wool laboratory shall:

(a) cooperate fully with the United States department of agriculture for the benefit of the Montana wool industry; and

(b) keep a complete and comprehensive system of records covering its internal administration, activities, and meetings of its advisory committee and all sampling, testing, and research work.

(2) The wool laboratory may:

(a) receive any moneys which the federal government may make available for the use of the laboratory and pay all such funds to the state treasurer to be deposited in a special trust fund; and

(b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.

(3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

(4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.

(5) The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

History: En. 75-8607 by Sec. 48, Ch. 2, L. 1971; R.C.M. 1947, 75-8607.

20-25-229. Montana seed laboratory — purpose — fees. (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory is to conduct effective scientific and practical research or testing work to develop as complete and accurate an analysis of grains and seeds as requested.

(3) The laboratory is under the general direction of the director of the agricultural experiment station.

(4) The laboratory shall:

(a) establish procedures for submitting seed samples for analysis; and

(b) determine the appropriate fees for analytical services provided by the laboratory.

History: En. Sec. 6, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.4; amd. Sec. 31, Ch. 83, L. 1989; amd. Sec. 2, Ch. 300, L. 2011.

Cross-References

Testing agricultural seeds, 80-5-126 through 80-5-129.

20-25-230. Acceptance of donations. The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

History: En. Sec. 7, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.5.

20-25-231. Federal grants and cooperative research studies. The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for cooperative research studies.

History: En. Sec. 8, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.6.

Cross-References

Contracts and agreements for research by state agencies, 90-1-107.

20-25-232. Income from sale of products — disposition. Any income received from the sale of agricultural products and services by the agricultural experiment station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 9, Ch. 29, L. 1971; Sec. 75-8411.7, R.C.M. 1947; En. 75-8603 by Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; R.C.M. 1947, 75-8411.7, 75-8603(4).

20-25-233. Short title. Sections 20-25-233 through 20-25-236 may be cited as the "Montana Sustainable Agriculture Research and Education Act".

History: En. Sec. 1, Ch. 659, L. 1989.

20-25-234. Purpose. The purpose of 20-25-233 through 20-25-236 is to promote more research and education on sustainable agricultural practices, such as crop rotations, green manuring, integrated pest management, and maintenance of livestock health and quality with reduced use of growth hormones and antibiotics. Sections 20-25-233 through 20-25-236 are intended to foster economically and ecologically beneficial means of soil improvement, pest management, irrigation, cultivation, harvesting, animal husbandry, transportation, and marketing for Montana agriculture, based on methods designed to accomplish the following:

(1) control pests and diseases of agricultural importance through management practices and alternatives that reduce or eliminate dependence on pesticides and petrochemicals;

(2) improve soil fertility and tilth through the use of practices that reduce dependence on synthetically compounded petrochemical-based fertilizers;

(3) produce, process, and distribute food and fiber in ways that consider the interactions among soil, plants, water, air, animals, tillage, machinery, labor, energy, and transportation to enhance resource efficiency, conservation, and public health; and

(4) provide Montana farmers and ranchers with useful agriculture production and marketing information on alternative and specialty crops and livestock, including ostriches, rheas, and emus.

History: En. Sec. 2, Ch. 659, L. 1989; amd. Sec. 3, Ch. 206, L. 1995.

20-25-235. Duties of Montana agricultural experiment station and cooperative extension service. The Montana agricultural experiment station and the cooperative extension service shall:

(1) develop a usable database of existing research in low-input, sustainable agriculture;

(2) conduct educational programs for producers using material from the database. Programs must include teaching producers techniques of low-input agriculture, assessment of risks involved with change, and marketing of products from their farms and ranches.

(3) extend research on the use of legumes to supply a portion of the nitrogen required by field crops;

(4) work with producers in establishing integrated pest management;

(5) begin research and development of marketable specialty crops and livestock that are integral to sustainable farming systems; and

(6) identify specific areas in which additional research is needed to enhance the adoption and success of low-input, sustainable agriculture in Montana.

History: En. Sec. 3, Ch. 659, L. 1989.

20-25-236. Report to legislature. The Montana agricultural experiment station and the cooperative extension service may, as provided in 5-11-210, report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in 20-25-233 through 20-25-236.

History: En. Sec. 4, Ch. 659, L. 1989; amd. Sec. 27, Ch. 112, L. 1991; amd. Sec. 27, Ch. 349, L. 1993.

20-25-237. Local government center — purpose — funding. (1) There is a local government center at Montana state university-Bozeman. The purpose of the center is to strengthen the capacities of Montana's local governmental units to deliver essential services efficiently and to provide training, technical assistance, and research to local officials.

(2) The local government center may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

History: **En. Sec. 1, Ch. 443, L. 1993; amd. sec. 36, Ch. 308, L. 1995.**

20-25-238 through 20-25-240 reserved.

20-25-241. Montana forest and conservation experiment station established. There is hereby established in the university of Montana-Missoula forestry school a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the board of regents.

History: **En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974; R.C.M. 1947, 28-301; amd. sec. 36, Ch. 308, L. 1995.**

20-25-242. Purpose of station. (1) It is the purpose of the Montana forest and conservation experiment station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing from forests;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved by windbreaks, shelterbelts, and woodlots for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the livestock producer;

(e) study the findings of other agencies so that the information may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing from forests and forestry;

(g) prepare and publish bulletins and reports, along with the necessary illustrations and maps, so that the information collected by the station in forestry and in conservation may be made available for use and distribute this information or material in other ways that the board of regents may direct;

(h) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

(i) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement;

(j) investigate and make tests of forest products produced or that may be produced within the state so that markets may be improved;

(k) consider other scientific and economic problems that, in the judgment of the board of regents, are of value to the people of the state;

(l) cooperate with the other departments of the university of Montana-Missoula, with the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations; and

(m) establish field experiment stations that, in the judgment of the board of regents, may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, gifts of land or other donations that may be made to the state for the purposes of 20-25-241 through 20-25-245.

History: **En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974; R.C.M. 1947, 28-303; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 333, Ch. 56, L. 2009.**

Cross-References

Conservation districts, Title 76, ch. 15.

20-25-243. Director of station. The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The board of regents shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary and to fix the compensation of all persons connected with said station.

History: En. Sec. 2, Ch. 141, L. 1937; R.C.M. 1947, 28-302.

20-25-244. Oath of office. The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to:

(1) perform all the services required of them under 20-25-241 through 20-25-245;

(2) guard carefully all confidential information accumulated in the progress of their work; and

(3) turn in to the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station.

History: En. Sec. 5, Ch. 141, L. 1937; R.C.M. 1947, 28-305.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-25-245. Reports — disposition of income. (1) The board of regents may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the board of regents may direct and as the interests of the state and of science and industry may demand.

(2) Income received by the station shall be deposited in the state treasury and used for the purposes of administering 20-25-241 through 20-25-245.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963; R.C.M. 1947, 28-304.

20-25-246 through 20-25-250 reserved.

20-25-251. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. 75-8423 by Sec. 23, Ch. 2, L. 1971; R.C.M. 1947, 75-8423.

20-25-252. Donations to Montana state university-Billings. The regents may accept for and on behalf of Montana state university-Billings college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8425 by Sec. 25, Ch. 2, L. 1971; R.C.M. 1947, 75-8425; amd. sec. 36, Ch. 308, L. 1995.

20-25-253. Purpose of university of Montana-western. The university of Montana-western has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8424 by Sec. 24, Ch. 2, L. 1971; R.C.M. 1947, 75-8424; amd. Sec. 2, Ch. 224, L. 1989; amd. Sec. 2, Ch. 38, L. 2001.

20-25-254. Donations to university of Montana-western. The regents may accept for and on behalf of the university of Montana-western any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8426 by Sec. 26, Ch. 2, L. 1971; R.C.M. 1947, 75-8426; amd. Sec. 3, Ch. 224, L. 1989; amd. Sec. 3, Ch. 38, L. 2001.

20-25-255. Acceptance of public lands. (1) The regents must receive, in the names of the university of Montana-western and Montana state university-Billings, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from the land grant for the payment in whole or in part of notes, bonds, or

other obligations issued by the regents for residence halls or other facilities at the university of Montana-western or at Montana state university-Billings, provided that any pledge must be subject to any prior pledge.

History: En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977; R.C.M. 1947, 75-8427; amd. Sec. 4, Ch. 224, L. 1989; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 4, Ch. 38, L. 2001.

20-25-256. Purposes of Montana state university-northern. Montana state university-northern has for its purpose instruction and education in:

(1) the English language, history, literature, mathematics, bookkeeping, moral philosophy, and political, rural, and household economy;

(2) mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art;

(3) entomology, geology, and such other natural sciences as may be prescribed by the regents;

(4) agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;

(5) irrigation and use of water for agricultural purposes; and

(6) all that relates to an efficient, modern manual training school.

History: En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971; R.C.M. 1947, 75-8428; amd. sec. 36, Ch. 308, L. 1995.

Part 3
Administration of University System

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and:

(1) must have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) shall adopt rules for its own government that are consistent with the constitution and the laws of the state and that are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) shall provide, subject to the laws of the state, rules for the government of the system;

(4) shall grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) shall keep a record of its proceedings;

(6) must have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) must receive from the board of land commissioners, from other boards or persons, or from the government of the United States all funds, income, and other property that the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) must have general control of all receipts and disbursements of the system;

(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) shall confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(11) shall prevent unnecessary duplication of courses at the units of the system;

(12) shall appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation;

(13) shall supervise and control the agricultural experiment station, along with any executive or subordinate board or authority that may be appointed by the governor with the advice and consent of the regents;

(14) shall adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents that may require it;

(15) shall ensure an adequate level of security for data, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

(16) shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents.

History: En. 75-8501 by Sec. 30, Ch. 2, L. 1971; R.C.M. 1947, 75-8501; amd. Sec. 7, Ch. 125, L. 1983; amd. Sec. 5, Ch. 21, L. 1985; (16)En. Sec. 4, Ch. 592, L. 1987; amd. Sec. 28, Ch. 112, L. 1991; amd. Sec. 28, Ch. 349, L. 1993; amd. Sec. 17, Ch. 308, L. 1995; amd. Sec. 64, Ch. 114, L. 2003; amd. Sec. 1, Ch. 78, L. 2013.

Cross-References

Rulemaking exempt from Montana Administrative Procedure Act, 2-4-102.
Creation of advisory councils by Board of Regents, 2-15-122.
Number and notice of meetings, 20-2-112.
Duty to adopt rules and keep records, 20-2-114.
Duty of Board of Regents to prescribe duties of Commissioner of Higher Education, 20-2-131.
Supervision and coordination of community colleges by Board of Regents, 20-15-103.
Board of Land Commissioners, Title 77, ch. 1, part 2.

20-25-302. Revenue-producing facilities — powers of regents. The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons. The charges, admissions, and fees are not considered tuition within the meaning of 20-25-421 and may be collected from any or all students.

(3) hold the net income derived from the operation of the facilities and the charges, admissions, and fees collected and devote the revenue from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as the revenue has not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of the facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for uses, at times, for periods, and at rates as in the regents' judgment will be consistent with the full use of the facilities for academic purposes and will add to the revenue available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for the facilities.

History: **En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503; amd. Sec. 74, Ch. 370, L. 1987; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 243, L. 1997.**

Cross-References

When construction authorized by Regents, 18-2-102.

Legislative intent regarding construction of student housing, 18-2-103.

20-25-303. Repealed. Sec. 3, Ch. 78, L. 2013.

History: **En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510; amd. Sec. 18, Ch. 308, L. 1995.**

20-25-304. Repealed. Sec. 3, Ch. 78, L. 2013.

History: **En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 1947, 75-8511.**

20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system:

(1) is responsible for the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) is the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) has the duties of one of the professorships as long as the interests of the unit require it;

(4) shall perform the duties of corresponding secretary for the unit;

(5) may offer multiyear contracts to athletic coaches;

(6) shall make an annual report to the regents containing any information that they may request; and

(7) shall furnish any special report on request of the regents or the legislature in accordance with 5-11-210.

History: **En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512; amd. Sec. 1, Ch. 139, L. 2005; amd. Sec. 58, Ch. 261, L. 2021.**

20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and the employee's supervisor in addition to the employee's regularly scheduled days off if the employee is in a pay status on the last regularly scheduled working day immediately before the holiday or on the first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

History: **En. Sec. 1, Ch. 340, L. 1981; amd. Sec. 334, Ch. 56, L. 2009.**

20-25-307. Disposition of land. (1) The board of regents may sell, exchange, and lease land and grant easements and licenses on land that is held or administered by the board of regents or the system and that is held by the state for the use and benefit of the board of regents or the system.

(2) The board of regents may not grant an estate or interest in land that was granted to the state in trust for the support and benefit of the system.

(3) In disposing of any estate or interest in land pursuant to subsection (1), the board of regents shall obtain consideration that equals or exceeds the full market value of the land. For sales and exchanges, full market value must be determined by the board of regents after an appraisal by a certified or licensed appraiser. If the appraiser determines that the valuation is not complicated and estimates, based on available data, that the full market value of the property is $10,000 or less, the board of regents may use a restricted or limited appraisal.

(4) Before approving an exchange of land, the board of regents shall give the public notice of the proposed exchange and an opportunity to comment. The board of regents shall, upon request of any person, hold a public hearing in the area where the state land to be conveyed

is located. Subject to subsection (6), the board of regents may, after review of the comments, approve the exchange if it determines that the exchange is in the best interests of the system.

(5) Prior to the sale of land, the board of regents shall prepare a request for proposals to purchase the land and publish public notice of the sale once a week for 4 consecutive weeks in a newspaper of general circulation published in the county where the land is situated. If a newspaper is not published in that county, notice must be published in any newspaper of general circulation in that county. The notice must describe the land to be sold, the appraised value of the land, the procedure by which persons may obtain the request for proposals, the terms and conditions of sale, and the criteria upon which each proposal will be evaluated. The sale procedure must provide reasonable opportunity for members of the public to submit proposals to purchase the land. The board of regents may sell the land only if it determines that the sale is in the best interests of the system. If the board of regents sells the land, the sale must be to the offeror whose proposal the board determines to be the most advantageous to the system, taking into consideration the price and the other evaluation criteria listed in the request for proposals.

(6) (a) The board of regents may sell or exchange the land only if the board of regents first:

(i) requests and obtains the written concurrence of the board of land commissioners;

(ii) provides proof that no use restrictions, encumbrances, or other conditions have been placed by the board of regents on the land proposed for sale or exchange that prevent the state from obtaining full market value for the land, taking into consideration the price and the other evaluation criteria listed in the request for proposals;

(iii) complies with the requirements of the Montana Environmental Policy Act provided in Title 75, chapter 1, parts 1 through 3; and

(iv) complies with the requirements of Montana antiquities laws provided in Title 22, chapter 3, part 4.

(b) The board of land commissioners may refuse to concur if it determines that:

(i) the sale or exchange does not return to the state full market value;

(ii) the evaluation criteria in the request for proposals or the sale procedure and proposal selection process did not provide the public with a reasonable opportunity to submit proposals to purchase the land or to have reasonable proposals selected;

(iii) the sale or exchange is not in the best interests of the state; or

(iv) the system has not complied with the requirements of subsections (6)(a)(ii) through (6)(a)(iv).

(7) After obtaining written concurrence of the board of land commissioners required in subsection (6), the board of regents shall convey the land by deed, executed by the presiding officer of the board or other person designated by the board, without covenants of warranty.

History: En. Sec. 2, Ch. 370, L. 1995; amd. Sec. 1, Ch. 425, L. 1997.

Cross-References

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Transfers and reservations of property interests in state lands, Title 77, ch. 2.

20-25-308. Prohibition on transfer to foundation. In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

(1) money in the higher education funds provided for in 17-2-102;

(2) excess proceeds of money borrowed pursuant to 20-25-402; and

(3) except as provided in 20-25-309, real or personal property acquired with money listed in subsection (1) or proceeds listed in subsection (2).

History: En. Sec. 1, Ch. 371, L. 1995; amd. Sec. 6, Ch. 478, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 33, Ch. 130, L. 2005; amd. Sec. 3, Ch. 419, L. 2007.

20-25-309. Exemption from state construction and contract laws for certain university projects. (1) The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer nonstate funds, gifts, grants, donations, in-kind contributions, and revenue on behalf of a unit of the Montana university system for the purpose of constructing or renovating athletic facilities. The terms, guaranties, and agreements relating to a facility subject to this subsection must be negotiated in the best interests of the state and must include guarantees that a commitment of state appropriations for design, construction, operations, or maintenance is not expressed or implied. The terms, guaranties, and agreements are subject to review and approval by the board of regents. After approval, the board of regents shall submit a report to the budget director certifying that the conditions of this subsection have been satisfied.

(2) The design and construction of projects pursuant to subsection (1) are not subject to the requirements of Title 18, chapters 2 and 8, except that:

(a) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e); and

(b) the provisions of Title 18, chapter 2, part 4, apply to all labor other than donated labor.

History: **En. Sec. 1, Ch. 419, L. 2007.**

20-25-310 reserved.

20-25-311. Motor vehicle regulation — parking and operation. The regents of the Montana university system are authorized to make rules at each unit of the university system concerning the parking and operation of motor vehicles upon the grounds, streets, drives, and alleys of each unit.

History: **En. Sec. 1, Ch. 398, L. 1971; R.C.M. 1947, 75-8503.2.**

Cross-References

Rulemaking by Regents not subject to Montana Administrative Procedure Act, 2-4-102.
Driver's licenses, Title 61, ch. 5.
Responsibility of vehicle users and owners, Title 61, ch. 6.
Traffic regulation, Title 61, ch. 8.

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;

(b) assess fines in accordance with a published schedule approved by the regents for violations of motor vehicle or parking regulations of each unit;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if the student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected must be remitted to the unit at which collections are made and must be used for appropriate maintenance and construction of parking facilities and for traffic control.

History: **En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974; R.C.M. 1947, 75-8503.3; amd. Sec. 1, Ch. 150, L. 1979; amd. Sec. 1, Ch. 91, L. 1985; amd. Sec. 3, Ch. 160, L. 1985; amd. Sec. 1, Ch. 220, L. 2003.**

Cross-References

Authority of Regents to authorize construction of facilities, 18-2-102.

20-25-313 through 20-25-320 reserved.

20-25-321. Security department members — appointment — campus security officer powers. (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system. Persons who are qualified under 7-32-303 to be campus security officers and who are employed and compensated by a security department as campus security officers are peace officers and may exercise their authority:

(a) upon the campuses of the Montana university system and, for campus-related activities, an area within 1 mile of the exterior boundaries of each campus;

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system; and

(c) if an agreement is reached under subsection (3), for activities and in areas described in the agreement.

(2) Campus security officers may not serve or execute civil processes.

(3) Any university system security department may seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers in areas outside the area described in subsections (1)(a) and (1)(b).

History: En. Sec. 1, Ch. 405, L. 1971; R.C.M. 1947, 75-8513; amd. Sec. 1, Ch. 416, L. 2003.

Cross-References

Peace officer defined, 1-1-207, 45-2-101.
Enforcement of Montana Alcoholic Beverage Code by peace officers, 16-1-101, 16-6-102 through 16-6-107.
Mutual assistance for peace officers, Title 44, ch. 11.
False alarms or reports to peace officers, 45-7-204, 45-7-205.
Failure to aid police officer, 45-7-304.
Failure to report felony to peace officers, 45-7-305.
Stop and frisk authority of peace officers, 46-5-401.

20-25-322. Traffic citations — agreements with city or county. The president of each unit may enter into an agreement with the city or county in which the unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws that occur within the boundaries of the campus or on streets or alleys contiguous to the campus. All citations must be considered within the jurisdiction of the appropriate local authority and must be handled in the same manner as citations issued by peace officers of the local authority.

History: En. Sec. 2, Ch. 405, L. 1971; R.C.M. 1947, 75-8514; amd. Sec. 335, Ch. 56, L. 2009.

Cross-References

Traffic regulation, Title 61, ch. 8.
Power of local authorities, 61-8-103.

20-25-323. Control and direction of security department. The president of each unit has general control and direction of the security department of the unit.

History: En. Sec. 3, Ch. 405, L. 1971; R.C.M. 1947, 75-8515; amd. Sec. 336, Ch. 56, L. 2009.

20-25-324. Firearms. Security guards who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may carry firearms in accordance with policies established by the board of regents after consulting with the student body government at the unit of the university system affected by the regents' policy.

History: En. Sec. 4, Ch. 405, L. 1971; R.C.M. 1947, 75-8516; amd. Sec. 1, Ch. 404, L. 1981; amd. Sec. 1, Ch. 430, L. 1991.

Cross-References

Training standards prescribed by Board of Crime Control, 44-7-101.
Curriculum of Law Enforcement Academy, 44-10-202.
Weapons, Title 45, ch. 8, part 3.

20-25-325 through 20-25-330 reserved.

20-25-331. Definitions. As used in 20-25-332, the following definitions apply:

(1) "For-profit fitness center" means a private sector facility that offers instruction, training, consultation, equipment, or space to the public for a fee to maintain, encourage, or develop physical fitness or conditioning.

(2) (a) "University fitness center" means a facility at a university unit, as provided in 20-25-201, that offers instruction, training, consultation, equipment, or space to maintain, encourage, or develop physical fitness or conditioning.

(b) The term does not include a university's swimming pool facilities, golf course facilities, or youth camps.

History: En. Sec. 1, Ch. 545, L. 2001.

20-25-332. Competition between for-profit fitness centers and university fitness centers prohibited — exception. (1) Except as provided in subsection (2), a university fitness center may not sell a contract or charge a monthly fee to individual members of the general public for the use of fitness center facilities if a for-profit fitness center offering similar services operates in the community where the university fitness center operates.

(2) The provisions of subsection (1) do not apply to:

(a) contracts or monthly fees that may be charged to students, employees, or the immediate family members of a student or an employee of a university;

(b) contracts or monthly fees that may be charged to alumni of the university as long as the number of alumni memberships does not exceed 10% of the total number of alumni who are dues-paying members of the university's alumni association and who reside in the municipality where the university is located and as long as the cost of the alumni membership is at least as much as the average cost of membership in for-profit fitness centers in the municipality; and

(c) daily passes sold to relatives of university students or employees.

(3) The provisions of this section do not apply to units of the university system with less than 3,500 full-time students.

History: **En. Sec. 2, Ch. 545, L. 2001.**

Part 4
Miscellaneous Finance

Part Cross-References

State university funds, Art. X, sec. 10, Mont. Const.

Genetic engineering technology research and development account — Montana State University - Bozeman, 17-2-131.

Submission deadline for budget reports, 17-7-112.

Collection of retirement fund contributions, 19-1-825.

20-25-401. Repealed. Sec. 35, Ch. 308, L. 1995.

History: **En. Sec. 1, Ch. 223, L. 1971; R.C.M. 1947, 75-8503.1.**

20-25-402. Borrowing by regents. (1) In carrying out the powers provided in 20-25-107, 20-25-301, and 20-25-302, the regents may:

(a) borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction of the facility and for 1 year after construction and the creation of a reserve for the payment of bond principal and interest;

(b) make purchases on a time or installment basis;

(c) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which must be fully negotiable notwithstanding any limitation on the source of payment of the bonds, notes, or securities, or fully registered bonds or bonds registered as to ownership of principal only;

(d) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(i) the net income received from rents, board, or both in housing, food service, and other facilities;

(ii) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(iii) (A) other income in the form of gifts, bequests, contributions, or federal grants of funds, including the proceeds or income from grants of lands or other real or personal property;

(B) receipts from athletic and other contests, exhibitions, and performances; and

(C) collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(e) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;

(f) secure any bonds authorized under this section by a trust indenture between the regents and any bank or trust company within or outside of the state of Montana or by a resolution establishing covenants of the regents with the holders of the bonds relating to:

(i) the construction, operation, use, and insurance of the facilities;

(ii) the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;

(iii) the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and

(iv) other matters that the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(g) subject to the following provisions, issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents:

(i) refunding bonds may, with the consent of the holders of the bonds to be refunded, be exchanged at par plus accrued interest for all or part of the bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. This subsection (1)(g) may not require the holder of any outstanding bond to accept payment of the bond or the delivery of a refunding bond in exchange for the bond, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenue pledged for the bonds are not sufficient, but not to refund any bonds or interest due that can be paid from revenue then on hand.

(ii) refunding bonds may bear interest at a rate lower or higher than the bonds refunded by the refunding bonds if they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient, for the purpose of releasing revenue required for payment of the outstanding bonds permitting the pledge of the revenue for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded, computed to their respective stated maturity dates.

(iii) in any case in which refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded by the refunding bonds mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, must be deposited in escrow with a suitable bank or trust company having its principal place of business within or outside of the state, which is a member of the federal reserve system and has a combined capital and surplus of not less than $1 million, and must be invested in the amount and in securities maturing on the dates and bearing interest at the rates that will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds must irrevocably appropriate for these purposes the escrow fund and all income from the escrow fund and must provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow funds must be limited to general obligations of the United States, securities for which principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies, including only banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities must be purchased simultaneously with the delivery of the refunding bonds.

(iv) revenue or other funds on hand in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due on the outstanding bonds and reserves securing the payment may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection with refunding the bonds, and the reasonable and customary charges of escrow agents and paying agents. Revenue and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (1)(g)(iii) to the extent consistent with the resolutions or indentures authorizing the outstanding bonds.

(h) sell bonds and sell or exchange refunding bonds issued under this section in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

(2) If applicable, the regents shall specify whether the bonds issued under this section are tax credit bonds as provided in 17-5-117.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977; R.C.M. 1947, 75-8504; amd. Sec. 26, Ch. 489, L. 2009.

Cross-References

Bond issues, Title 17, ch. 5.

20-25-403. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. 75-8505 by Sec. 34, Ch. 2, L. 1971; R.C.M. 1947, 75-8505.

20-25-404. Revenue-producing facilities considered as one. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one, but income received at one unit shall not be used to discharge obligations created for facilities at another unit.

History: En. 75-8506 by Sec. 35, Ch. 2, L. 1971; R.C.M. 1947, 75-8506.

Cross-References

Authorization for construction of revenue-producing facilities, 18-2-102.

20-25-405. Restriction on use of state funds. No state funds except those specified in 20-25-402 shall be obligated or used for the purposes of parts 3 and 4 of this chapter unless specifically directed by the legislature.

History: En. 75-8507 by Sec. 36, Ch. 2, L. 1971; R.C.M. 1947, 75-8507.

20-25-406. Previous contracts unimpaired. This chapter shall not impair any contract, indenture, or agreement executed under previous laws.

History: En. 75-8508 by Sec. 37, Ch. 2, L. 1971; R.C.M. 1947, 75-8508.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-407. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) any contract or undertaking or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to January 18, 1971; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to January 18, 1971.

History: En. 75-8509 by Sec. 38, Ch. 2, L. 1971; R.C.M. 1947, 75-8509.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-408 through 20-25-420 reserved.

20-25-421. Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may utilize waivers in tuition and fees to aid in the recruitment of students to units of the university system and to promote the policy of assisting the categories of students specified in this subsection. The regents may:

(a) waive or discount nonresident tuition for selected and approved nonresident students, including nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons who have one-fourth Indian blood or more or are enrolled members of a federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action;

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state military duty; or

(vii) qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection (2)(c)(vii), a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(A) a paid or volunteer firefighter as described in 7-33-4107 or 19-17-108;

(B) a law enforcement officer as defined in 7-32-201; or

(C) a full-time highway patrol officer.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974; R.C.M. 1947, 75-8601; amd. Sec. 1, Ch. 170, L. 1989; amd. Sec. 72, Ch. 546, L. 1995; amd. Sec. 1, Ch. 41, L. 1997; amd. Sec. 2, Ch. 418, L. 1997; amd. Sec. 2, Ch. 255, L. 2003; amd. Sec. 1, Ch. 577, L. 2005; amd. Sec. 1, Ch. 27, L. 2007; amd. Sec. 28, Ch. 44, L. 2007; amd. Sec. 1, Ch. 280, L. 2013; amd. Sec. 1, Ch. 73, L. 2015; amd. Sec. 8, Ch. 235, L. 2015; amd. Sec. 4, Ch. 240, L. 2021; amd. Sec. 1, Ch. 455, L. 2023.

Cross-References

Rules for determining residence, 1-1-215, 20-25-503, 20-25-504.
Free tuition to residents of Pine Hills youth correctional facility, 52-5-112.

20-25-422. Support of university system. (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund after any deductions made under 77-1-109;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor.

History: En. 75-8602 by Sec. 43, Ch. 2, L. 1971; R.C.M. 1947, 75-8602; amd. Sec. 7, Ch. 533, L. 1993; amd. Sec. 1, Ch. 370, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 7, Ch. 122, L. 1999; amd. Sec. 6, Ch. 465, L. 2009.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.
State university funds inviolate, Art. X, sec. 10, Mont. Const.
Deposits and investments, Title 17, ch. 6.

20-25-423. Repealed. Sec. 8, Ch. 57, L. 2009.

History: En. Sec. 1, Ref. No. 75, app. Nov. 7, 1978; amd. Sec. 1, Ref. No. 106, app. Nov. 8, 1988; amd. Ref. No. 113, app. Nov. 3, 1998; amd. Sec. 121, Ch. 584, L. 1999.

20-25-424. Receipt of funds. (1) The treasurer of Montana state university-Bozeman may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March

4, 1907, known as the Nelson Amendment, to be expended under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before December 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; R.C.M. 1947, 75-8605(1)(a), (2); amd. Sec. 6, Ch. 21, L. 1985; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 2, Ch. 78, L. 2013.

Cross-References

Fiscal year and financial reports, 17-2-110.

20-25-425. Control of expenditures. Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977; R.C.M. 1947, 75-8609.

Cross-References

Uniform accounting system and expenditure control requirements, 17-1-102.
Procurement generally, Title 18, ch. 4.
Special purchasing conditions, Title 18, ch. 5.

20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises must be made to each unit in its legal name or to the Montana university system assistance program established by 20-25-455. If made to any officer or board of the unit, the donations, grants, gifts, or devises must be immediately transferred to the unit.

History: En. 75-8610 by Sec. 51, Ch. 2, L. 1971; R.C.M. 1947, 75-8610; amd. Sec. 3, Ch. 202, L. 2011.

20-25-427. Allocation of indirect cost reimbursements. Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract.

History: En. Sec. 1, Ch. 624, L. 1989; amd. Sec. 65, Ch. 114, L. 2003; amd. Sec. 27, Ch. 489, L. 2009.

20-25-428. Tribal college payment for services provided to resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide a payment to tribal colleges for enrolled resident nonbeneficiary students who are taking courses for which credit is transferable to another Montana college or university.

(2) (a) Each tribal college shall apply to the regents for this payment. Except as provided in subsection (7), the money must be distributed on a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal college during the previous year.

(b) To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and must be enrolled in courses for which credit is transferable to another Montana college or university.

(c) The distribution for any resident nonbeneficiary student payment must be limited to a maximum annual amount of $4,183 for each full-time equivalent student.

(3) A payment is contingent on the tribal college:

(a) being accredited or being a candidate for accreditation by the northwest commission on colleges and universities;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with documentation on:

(i) the number of resident nonbeneficiary students for whom the tribal college is entitled to a payment under this section; and

(ii) the curriculum to ensure that the content and quality of courses offered by the tribal college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) (a) By June 15 of each year, a tribal college shall report to the regents the number of eligible resident nonbeneficiary students who attended the tribal college in that academic year.

(b) By August 15 of each year, the regents shall calculate the payment for each tribal college based on the number of eligible students submitted pursuant to subsection (4)(a) and distribute the funds to each tribal college.

(5) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(6) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(7) Prior to receiving money pursuant to subsection (1), each tribal college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(8) The calculation in subsection (7) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(9) As used in this section, "resident nonbeneficiary student" means a resident of the state of Montana who is not:

(a) a member of an Indian tribe; or

(b) a biological child of a member of an Indian tribe, living or deceased.

History: En. Sec. 1, Ch. 362, L. 1997; amd. Sec. 1, Ch. 147, L. 2005; amd. Sec. 1, Ch. 255, L. 2007; amd. Sec. 2, Ch. 286, L. 2015; amd. Sec. 1, Ch. 105, L. 2017; amd. Sec. 1, Ch. 161, L. 2019; amd. Sec. 4, Ch. 739, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 739, L. 2025. Amendment effective July 1, 2025.

20-25-429 and 20-25-430 reserved.

20-25-431. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 1, Ch. 672, L. 1979.

20-25-432. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 2, Ch. 672, L. 1979.

20-25-433. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 3, Ch. 672, L. 1979; amd. Sec. 24, Ch. 298, L. 1983.

20-25-434. Repealed. Sec. 35, Ch. 308, L. 1995.

History: En. Sec. 4, Ch. 672, L. 1979; amd. Sec. 25, Ch. 298, L. 1983.

20-25-435 through 20-25-438 reserved.

20-25-439. Vocational-technical education — mill levy required. (1) The boards of county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties shall in each calendar year levy a tax of 1½ mills on the dollar value of all taxable property, real and personal, located within the respective county.

(2) The funds from the mill levy must be deposited in the general fund and must be distributed for vocational-technical education on the basis of budgets approved by the board of regents.

History: En. Sec. 34, Ch. 308, L. 1995; amd. Sec. 122, Ch. 584, L. 1999; amd. Sec. 17, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 17, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

20-25-440. Honors college program building. The university of Montana-Missoula may construct an honors college program building costing up to $2 million to be financed with private funds. The department of administration shall administer the construction project.

History: En. Sec. 1, Ch. 22, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

20-25-441. Lease of university of Montana-Missoula property for stadium authorized. The board of regents may lease land or land and facilities to a private, nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the university of Montana-Missoula for the purpose of renovation or construction by the foundation of a football stadium for the university of Montana-Missoula. The terms of the lease must be advantageous to the state and must include a guarantee that no commitment of funds to any portion of the initial construction, other than as approved in Senate Joint Resolution No. 14 of the 48th Legislature, is expressed or implied.

History: En. Sec. 1, Ch. 477, L. 1985; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

State building leases, Title 18, ch. 3, part 1.

20-25-442. Stadium construction on leased land. The construction of stadium facilities on land leased under 20-25-441 is not subject to the requirements of Title 18, chapter 2, except that:

(1) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e);

(2) the provisions of Title 18, chapter 2, part 4, apply to all labor except donated labor; and

(3) such other provisions of law as may be required to protect the interests of the state of Montana.

History: En. Sec. 2, Ch. 477, L. 1985.

20-25-443 through 20-25-450 reserved.

20-25-451. Interest on student activity fees. Interest earned on investment of student activity fees used to support a student government at a unit of the university system may be retained by the student government supported by the fees.

History: En. Sec. 1, Ch. 341, L. 1987.

20-25-452. Student organizations functioning as political committees — funding. (1) A student organization that is required to register as a political committee and is regularly active may be funded in the same manner as other student organizations, except that if the organization is funded by an additional optional student fee, the fee must be an opt-in fee.

(2) The opt-in fee may only be delivered to the student organization by means of a written instrument signed by the student or through an electronic payment system that operates independently of any systems, electronic or otherwise, used by a public postsecondary institution for the purpose of collecting, receiving, or disbursing any tuition or fees.

(3) As used in this section, the following definitions apply:

(a) "Benefit" means any type of advantage, including but not limited to:

(i) recognition;

(ii) registration;

(iii) the use of facilities of the public postsecondary institution for meetings or speaking purposes;

(iv) the use of channels of communication; and

(v) funding sources that are otherwise available to other student organizations at the public postsecondary institution.

(b) "Political committee" has the meaning provided in 13-1-101.

(c) "Public postsecondary institution" means:

(i) a unit of the Montana university system as described in 20-25-201; or

(ii) a Montana community college defined and organized as provided in 20-15-101.

(d) "Regularly active" means having expended more than $10,000 in each of two or more statewide elections in the preceding 10 years.

(e) "Student organization" means an officially recognized group or a group seeking official recognition at a public postsecondary institution that is composed of students who receive or are seeking to receive a benefit through the public postsecondary institution.

History: En. Sec. 2, Ch. 494, L. 2021.

20-25-453 and 20-25-454 reserved.

20-25-455. Montana university system assistance program — purpose — duties of board of regents. (1) There is a Montana university system assistance program administered by the board of regents through the office of the commissioner of higher education. The program must allow a private donor to make tax deductible contributions by cash, check, or money order that benefit a qualifying institution and students of these public institutions.

(2) As part of the program, the board of regents shall:

(a) provide a donor with a receipt that reflects the contribution in sufficient detail for the donor to claim any applicable credits or deductions for state and federal income tax purposes;

(b) deposit donations to the program in the state special revenue account established by 20-25-456;

(c) develop procedures and forms that enable a donor to make contributions by cash, check, or money order for the benefit of a specific qualifying institution. If a donor does not select an institution, the donation must be allocated on an equal basis to all qualifying institutions by dividing the total donation by the number of qualifying institutions.

(d) develop procedures and forms that enable a donor to select the percentage of the donation that will be used by a qualifying institution for building projects, educational programs, and academic scholarships. If a donor does not make a selection, the donation may be used for the general support, maintenance, or improvement of the institution as provided in 17-3-1001(2).

(e) maintain adequate records to account for contributions that are allocated to each specific qualifying institution and any donor selection preference;

(f) provide each qualifying institution with a schedule showing the total donations credited to the institution at the end of each fiscal year; and

(g) distribute donor contributions to the qualifying institution's endowment fund as provided in 20-25-456.

(3) For the purposes of 20-25-456 and this section, "qualifying institution" means:

(a) a Montana community college that is part of a community college district, defined and organized as provided in 20-15-101; and

(b) a unit of the Montana university system, as described in 20-25-201, or any of its affiliated campuses.

History: **En. Sec. 1, Ch. 202, L. 2011.**

20-25-456. Voluntary contribution account for Montana's universities, colleges, and community colleges. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the Montana university system assistance account. The board of regents shall deposit donations to the Montana university system assistance program in the account as provided in 20-25-455.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying institutions.

(3) Earnings in the account are allocable to each qualifying institution in proportion to each qualifying institution's share of the account balance.

(4) The board of regents shall distribute donor contributions to the qualifying institution's endowment fund. A distribution may not exceed the institution's allocation and must be used for the purpose established by the donor as provided in 20-25-455(2)(d). The distributions are derived from a private nonstate source and are payable without an appropriation pursuant to 17-8-101.

History: **En. Sec. 2, Ch. 202, L. 2011.**

Part 5
University Students — Qualifications and Rights

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.
Student financial assistance, Title 20, ch. 26.
Use of force by parent, guardian, or teacher, 45-3-107.

20-25-501. Definitions. (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Minor" means a male or female, as defined in 1-1-201, person who has not obtained the age of 18 years.

(c) "Qualified person" means a person legally qualified to determine the person's own domicile.

(d) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education is not alone sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school who is a citizen or resident alien of the United States and whose parents, parent, or guardian has resided in Montana at least 1 full year of the 2 years immediately preceding the student's graduation from high school. The classification continues for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, the member's spouse, or the member's dependent children.

(2) In the event that the definition of residency or any portion of the definition is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system may make rules on what constitutes adequate evidence of residency status not inconsistent with those court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973; R.C.M. 1947, 75-8702; amd. Sec. 1, Ch. 435, L. 1979; amd. Sec. 19, Ch. 308, L. 1995; amd. Sec. 118, Ch. 42, L. 1997; amd. Sec. 10, Ch. 685, L. 2023.

Cross-References

Rules for determining residence, 1-1-215.
Rulemaking power of Regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-502. Qualification of students. The university system is open to all people, subject to such uniform regulations as the regents deem proper.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
Illegal discrimination, Title 49, ch. 2.
Governmental code of fair practices, Title 49, ch. 3.

20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the

state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces residency in any other state and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

(8) A member of the Montana national guard as defined in 10-1-101 is presumed to be domiciled in the state for purposes of qualifying for in-state tuition classification for a postsecondary certificate or undergraduate, postgraduate, or professional degree program.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977; R.C.M. 1947, 75-8703; amd. Sec. 2, Ch. 435, L. 1979; amd. Sec. 20, Ch. 308, L. 1995; amd. Sec. 6, Ch. 243, L. 1997; amd. Sec. 1, Ch. 426, L. 2021.

Cross-References

Rules for determining residence, 1-1-215.

20-25-504. Evidence as to domiciliary intent — changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person shall intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence must be filed with the registering authority of the unit. Changes in classification must be in writing signed by the registering authority and take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if the minor's parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in the person's dependent's classification for tuition and fee purposes unless the person completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of the authority's decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of the decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain an appeal.

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975; R.C.M. 1947, 75-8704; amd. Sec. 337, Ch. 56, L. 2009.

20-25-505. Repealed. Sec. 3, Ch. 170, L. 1989.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971; amd. Sec. 35, Ch. 266, L. 1977; R.C.M. 1947, 75-8705.

20-25-506. Military instruction. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

20-25-507 through 20-25-510 reserved.

20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities that are necessary to protect the health, safety, and privacy of a person's residence and the privacy of the person's records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. A student may not be subjected to discrimination by the use of covert records.

History: En. Sec. 1, Ch. 357, L. 1973; R.C.M. 1947, 75-8706; amd. Sec. 78, Ch. 575, L. 1981; amd. Sec. 338, Ch. 56, L. 2009.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Peace officer defined, 1-1-207, 45-2-101.
Public records, Title 2, ch. 6.
Confidential communications by student, 26-1-809.

20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract that would waive the student's right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973; R.C.M. 1947, 75-8707; amd. Sec. 339, Ch. 56, L. 2009.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

20-25-513. Written notice required for entry to student's room — emergency. An authorized official of the university or college may not enter the room of a student located at an institution unless the official has given the student a notice in writing. An emergency such as a fire or a call for help or when there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In an emergency, evidence of a crime obtained as a result of the emergency entry may not be admissible in any court of law unless due process of law has been satisfied in obtaining the evidence.

History: En. Sec. 3, Ch. 357, L. 1973; R.C.M. 1947, 75-8708; amd. Sec. 340, Ch. 56, L. 2009.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-514. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state, and nation.

History: En. Sec. 4, Ch. 357, L. 1973; R.C.M. 1947, 75-8709.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-515. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless the record must have been subpoenaed by a court or tribunal of competent jurisdiction. A fee charged by a university or college for the release of the transcript or academic record of a student who meets the criteria in 52-2-629(1) must first be charged to the department of public health and human services under the requirements of 52-2-629.

History: En. Sec. 5, Ch. 357, L. 1973; R.C.M. 1947, 75-8710; amd. Sec. 4, Ch. 399, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 399, L. 2025. Amendment effective October 1, 2025.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.

20-25-516. Academic records to be kept separate — student's right to examine records. (1) Academic records must be kept separate from disciplinary and all other records. Academic transcripts may contain only information of an academic nature.

(2) A student has the right to examine all written summaries, descriptions, statements, or reports of an academic or disciplinary nature that may have been compiled upon the student.

History: En. Sec. 6, Ch. 357, L. 1973; R.C.M. 1947, 75-8711; amd. Sec. 341, Ch. 56, L. 2009.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.

20-25-517. Awarding credit for military service — policy. (1) The commissioner may develop criteria for awarding academic credit at a postsecondary institution for a student's prior learning through military service and submit a proposed policy that incorporates those criteria to the board of regents for approval.

(2) For the purposes of this section, "postsecondary institution" has the meaning provided in 20-26-603.

History: En. Sec. 1, Ch. 77, L. 2013.

20-25-518. Discrimination against student organizations prohibited. (1) A public postsecondary institution may not deny a religious, political, or ideological student organization a benefit or privilege available to other student organizations or otherwise discriminate against a student organization based on the student organization's expressive activity, including any requirement of the student organization that a leader or member:

(a) affirm and adhere to the student organization's sincerely held beliefs;

(b) comply with the student organization's standards of conduct; or

(c) further the student organization's mission or purpose, as defined by the student organization.

(2) As used in 20-25-519 and this section, the following definitions apply:

(a) "Benefit or privilege" means any type of advantage, including but not limited to:

(i) recognition;

(ii) registration;

(iii) the use of facilities of the public postsecondary institution for meetings or speaking purposes;

(iv) the use of channels of communication; and

(v) funding sources that are otherwise available to other student organizations at the public postsecondary institution.

(b) "Public postsecondary institution" means:

(i) a unit of the Montana university system as defined in 20-25-201; or

(ii) a Montana community college, defined and organized as provided in 20-15-101.

(c) "Student organization" means an officially recognized group or a group seeking official recognition at a public postsecondary institution that is composed of students who receive or are seeking to receive a benefit through the public postsecondary institution.

History: En. Sec. 1, Ch. 234, L. 2021.

20-25-519. Antiharassment and freedom of speech protections for students. (1) A public postsecondary institution shall adopt a policy prohibiting student-on-student discriminatory harassment. A public postsecondary institution may not enforce the policy by disciplining a student for a behavioral violation of harassment or a similar charge stemming from an alleged violation of the policy for speech or expression unless:

(a) the speech or expression is unwelcome and is so severe, pervasive, and subjectively and objectively offensive that a student is effectively denied equal access to educational opportunities or benefits provided by the public postsecondary institution; or

(b) the speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors.

(2) This section may not be construed to prevent a public postsecondary institution from prohibiting, limiting, or restricting speech or expression that is not protected by the first amendment of the United States constitution or Article II, section 7, of the Montana constitution.

History: En. Sec. 2, Ch. 234, L. 2021.

Part 6
Health Education — Drug and Alcohol Instruction

Part Cross-References

Dangerous drugs, Title 45, ch. 9; Title 50, ch. 32.

Alcoholism and drug dependence, Title 53, ch. 24.

20-25-601. Purpose of part — legislative intent. It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

20-25-602. Teacher instruction — colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded the degree.

History: En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903; amd. Sec. 342, Ch. 56, L. 2009.

20-25-604. Department in advisory capacity. The department of public health and human services shall act in an advisory capacity in establishing all courses required under this part, and the courses may be established only after consultation with and advice by the department.

History: En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905; amd. Sec. 52, Ch. 418, L. 1995; amd. Sec. 73, Ch. 546, L. 1995.

Part 7
Work-Study Program

Part Cross-References

Student financial assistance, Title 20, ch. 26.

20-25-701. Definitions and purpose. (1) As used in this part, unless the context otherwise requires, the following definitions apply:

(a) "Institution" means any public institution of postsecondary education governed, supervised, or coordinated by the board of regents of higher education.

(b) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution or who is presently enrolled as a full-time student in good standing, as determined by the institution.

(2) It is the purpose of this part to help ensure that no resident of Montana be denied attendance at institutions governed, supervised, or coordinated by the board of regents of higher education because of financial barriers and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units and certain public interest organizations.

History: En. 75-9101, 75-9102 by Secs. 1, 2, Ch. 307, L. 1974; R.C.M. 1947, 75-9101, 75-9102.

20-25-702. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this part.

History: En. 75-9103 by Sec. 3, Ch. 307, L. 1974; R.C.M. 1947, 75-9103.

20-25-703. Limitation on use of funds. At least 70% of the funds allocated to the program must be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. The other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward the student's education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307, L. 1974; R.C.M. 1947, 75-9104; amd. Sec. 343, Ch. 56, L. 2009.

20-25-704. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307, L. 1974; R.C.M. 1947, 75-9105.

20-25-705. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: En. 75-9106 by Sec. 6, Ch. 307, L. 1974; R.C.M. 1947, 75-9106.

Cross-References

Rulemaking power of Regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-706. Eligibility. Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program, which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or faction in an election for public or party office;

(3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: En. 75-9107 by Sec. 7, Ch. 307, L. 1974; R.C.M. 1947, 75-9107; amd. Sec. 13, Ch. 384, L. 1979.

20-25-707. Antidiscrimination. An employer is not eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, as defined in 1-1-201, age, marital status, physical or mental disability, ancestry, or national origin.

History: En. 75-9108 by Sec. 8, Ch. 307, L. 1974; amd. Sec. 36, Ch. 266, L. 1977; R.C.M. 1947, 75-9108; amd. Sec. 20, Ch. 472, L. 1997; amd. Sec. 11, Ch. 685, L. 2023.

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
Illegal discrimination, Title 49, ch. 2.
Governmental code of fair practices, Title 49, ch. 3.
Rights of persons with disabilities, Title 49, ch. 4.

20-25-708. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program, subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: En. 75-9109 by Sec. 9, Ch. 307, L. 1974; R.C.M. 1947, 75-9109.

Cross-References

Minimum wages, Title 39, ch. 3, part 4.

20-25-709. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than 30% of the student's hourly wage.

History: En. 75-9110 by Sec. 10, Ch. 307, L. 1974; R.C.M. 1947, 75-9110.

Part 8
Medical Education Agreements

20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of Montana approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which the educator is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which the commissioner is appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until a successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a presiding officer and a vice presiding officer and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The presiding officer may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or the governor's designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the

commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1, Ch. 216, L. 1951; R.C.M. 1947, 75-4901; amd. Sec. 344, Ch. 56, L. 2009.

20-25-802. Effective date — notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification, and adoption of said compact by the 32nd legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact, and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951; R.C.M. 1947, 75-4902.

20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students. The western interstate commission for higher education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis, the payment of partial or full tuition and other charges, and the furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

History: En. Sec. 1, Ch. 128, L. 1971; R.C.M. 1947, 75-4903.

Cross-References

Power of community college board of trustees to enter into agreements with Commission, 20-15-225.

20-25-804. Form and contents of agreements. The authority conferred by 20-25-803 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

History: En. Sec. 2, Ch. 128, L. 1971; R.C.M. 1947, 75-4904.

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.
Limit on expenditures, 17-8-103.

20-25-805. State obligations or rights under compact not altered. Nothing contained in this chapter shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

History: En. Sec. 3, Ch. 128, L. 1971; R.C.M. 1947, 75-4905.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;
(b) one member who is engaged in a professional occupation; and
(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of the term of appointment, even though the legislative term may have ended.

History: En. Sec. 1, Ch. 130, L. 1979; amd. Sec. 345, Ch. 56, L. 2009.

20-25-807 through 20-25-809 reserved.

20-25-810. Contract requirements for university of Washington cooperative medical education program. (1) (a) An individual accepted into the cooperative medical education program with the university of Washington school of medicine shall, before confirming enrollment in the program, enter into a contract specifying whether the individual will commit to entering active full-time professional practice in Montana for a period of 3 years within 1 year of obtaining professional status.

(b) Residency in a family medicine residency program in Montana must be credited toward the practice requirement of this section at a rate of one-third year for each year of service in the residency program.

(2) An individual who decides against committing to entering full-time professional practice in Montana shall pay 2.5 times the fee established in 20-26-1502. The fee must be deposited in the state special revenue account provided for in 20-26-1501.

(3) (a) An individual who fails to honor a commitment to return to Montana to enter full-time professional practice for the full 3-year period shall repay the full amount of the individual medicine support fee paid by the state for the individual's medical education.

(b) Repayment must begin within 1 year of obtaining professional status and must be completed within 10 years of the date the repayment requirement began.

(c) Interest must accrue at the time the loan becomes due at a rate equal to the rate for the federal Stafford loan, adjusted annually but not to exceed 8%.

(4) The repayment obligation may be:

(a) suspended if repayment is temporarily impossible or would create extreme hardship for a temporary period, including but not limited to suspension for medical reasons, personal reasons, parental leave, or call to active duty in the armed forces; or

(b) waived if repayment is permanently impossible or would create extreme hardship, including but not limited to death, inability to complete the program, or inability to obtain professional status due to disability or another reason.

(5) The board of regents may adopt policies to carry out the provisions of this section including but not limited to:

(a) determination of the time at which an individual obtains professional status; and

(b) the circumstances under which repayment of the medicine support fee may be suspended or waived.

History: En. Sec. 1, Ch. 436, L. 2017.

20-25-811. Repealed. Sec. 1, Ch. 436, L. 2025.

History: En. Sec. 1, Ch. 418, L. 2019.

Part 9
Family Education Savings Program

Part Cross-References

Family education savings program account, Title 15, ch. 62.

20-25-901. Family education savings program oversight committee — membership — powers and duties. (1) There is a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) the state treasurer or the state treasurer's designee;

(c) the presiding officer of the board or the presiding officer's designee; and

(d) four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section.

History: En. Sec. 6, Ch. 540, L. 1997; amd. Sec. 53, Ch. 483, L. 2001; amd. Sec. 7, Ch. 566, L. 2003.

20-25-902. Board — powers and duties. (1) The board shall:

(a) administer, manage, promote, and market the program;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) administer the program in compliance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) at the board's discretion, charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) if the board determines that contracting for program management will benefit the program, select the financial institution or institutions to act as the program manager pursuant to 15-62-203;

(f) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(g) adopt policies for the establishment of a maximum total balance that may be held in accounts for a designated beneficiary and for providing adequate safeguards to prevent excess contributions in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(h) adopt procedures as necessary to implement Title 15, chapter 62, including applications for participation in the program;

(i) serve as trustee of the family education savings trust established in 15-62-301;

(j) enter into participation agreements with account owners; and

(k) maintain the program on behalf of the state as required by section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) The definitions in 15-62-103 apply to this section.

History: **En. Sec. 7, Ch. 540, L. 1997; amd. Sec. 8, Ch. 566, L. 2003; amd. Sec. 6, Ch. 549, L. 2005; amd. Sec. 10, Ch. 349, L. 2021; amd. Sec. 49, Ch. 503, L. 2021.**

Part 10
Motorcycle Safety Training Program

20-25-1001. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Instructor of motorcycle safety training" means an instructor approved by the board of regents to instruct motorcycle safety training.

(2) "Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the board of regents and that is designed to teach motorcyclists how to safely operate their vehicles.

History: **En. Sec. 1, Ch. 181, L. 1999.**

20-25-1002. State motorcycle safety account — proceeds earmarked for account. (1) There is a state motorcycle safety account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, motorcycle endorsement fees, motorcycle safety fees, and designated grants or an amount equal to that amount must be deposited in the state motorcycle safety account and must be available to support only approved motorcycle safety training courses, appropriate instructor of motorcycle safety training, and other related motorcycle safety training activities.

History: **En. Sec. 2, Ch. 181, L. 1999; amd. Sec. 127, Ch. 574, L. 2001.**

20-25-1003. Motorcycle safety promotion. In cooperation with other state, local government, and private agencies, the department of justice and the board of regents are encouraged to promote safety and awareness in the use and operation of motorcycles through action appropriate to the agencies' purposes and goals, including advertising and encouraging both publicly and privately offered motorcycle safety training.

History: **En. Sec. 1, Ch. 324, L. 1989; Sec. 61-2-401, MCA 1989; redes. 20-7-510 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 6, Ch. 181, L. 1999; Sec. 20-7-510, MCA 1997; redes. 20-25-1003 by Sec. 14(2), Ch. 181, L. 1999.**

20-25-1004. Motorcycle safety advisory committee. (1) There is a motorcycle safety advisory committee. The committee is allocated to the office of the board of regents for administrative purposes.

(2) The purpose of the motorcycle safety advisory committee is to advise the board of regents and the department of justice concerning motorcycle rider safety issues, motorcycle safety training, motorcycle endorsement testing, and other matters relating to motorcycle safety.

(3) The motorcycle safety advisory committee consists of five members. Except as provided in subsection (5)(a), each member must be appointed for a term of 4 years. The committee consists of:

(a) one peace officer appointed by the governor;

(b) one certified instructor of motorcycle safety training, as provided in 20-25-1005, who is appointed by the board of regents;

(c) two motorcycle riders representing motorcycle riding groups, such as the American motorcyclist association or American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and

(d) one representative from the department of justice who is appointed by the attorney general.

(4) A member may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term by the authority that appointed the vacating member.

(5) (a) (i) To allow for staggered membership appointments, the initial terms of two committee members must be for 2 years. These members are:

(A) the peace officer provided for in subsection (3)(a); and

(B) one motorcycle rider, provided for in subsection (3)(c), to be chosen by lot at the organizational meeting.

(ii) The successors for the peace officer and motorcycle rider shall serve 4-year terms.

(b) The first instructor of motorcycle safety training member appointed under subsection (3)(b) need not be certified by the board of regents, but the member must have an instructor of motorcycle safety training certification awarded by a national organization concerned with motorcycle safety.

History: En. Sec. 2, Ch. 324, L. 1989; Sec. 61-2-402, MCA 1989; redes. 20-7-511 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 7, Ch. 181, L. 1999; Sec. 20-7-511, MCA 1997; redes. 20-25-1004 by Sec. 14(2), Ch. 181, L. 1999.

20-25-1005. Standards for motorcycle safety training. The board of regents may establish minimum motorcycle safety training standards, including instruction, courses, and instructor certification for conducting training authorized by 20-25-1006. The standards must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the board of regents.

History: En. Sec. 3, Ch. 324, L. 1989; Sec. 61-2-403, MCA 1989; redes. 20-7-512 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 8, Ch. 181, L. 1999; Sec. 20-7-512, MCA 1997; redes. 20-25-1005 by Sec. 14(2), Ch. 181, L. 1999.

20-25-1006. Motorcycle safety training course — tuition. (1) The board of regents may prescribe tuition rates for the motorcycle safety training courses. The tuition collected must be deposited in the state motorcycle safety account, as provided in 20-25-1002.

(2) The board of regents may delegate authority to a unit of the university system to conduct motorcycle safety training courses and to approve instructors of motorcycle safety training.

(3) State agencies and subdivisions of the state may provide facilities, such as classrooms and outdoor paved areas or other resources, for conducting motorcycle safety training courses.

(4) Subject to the availability of funds, the board of regents may pay for construction, repair, or purchases from the state motorcycle safety account to provide facilities for motorcycle safety training courses.

History: En. Sec. 4, Ch. 324, L. 1989; amd. Sec. 1, Ch. 701, L. 1991; Sec. 61-2-404, MCA 1989; redes. 20-7-513 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 9, Ch. 181, L. 1999; Sec. 20-7-513, MCA 1997; redes. 20-25-1006 by Sec. 14(2), Ch. 181, L. 1999; amd. Sec. 10, Ch. 307, L. 2001.

20-25-1007. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 5, Ch. 324, L. 1989; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 2, Ch. 701, L. 1991; Sec. 61-2-405, MCA 1989; redes. 20-7-514 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 1, Ch. 432, L. 1995; amd. Sec. 10, Ch. 181, L. 1999; Sec. 20-7-514, MCA 1997; redes. 20-25-1007 by Sec. 14(2), Ch. 181, L. 1999; amd. Sec. 9, Ch. 409, L. 1999.

Parts 11 and 12 reserved

Part 13
Group Benefits

20-25-1301. Purpose. The purpose of this part is to establish the structure by which the Montana university system may develop group benefits plans for employees of the Montana university system and their dependents and to clarify that the plan design and employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

History: En. Sec. 1, Ch. 256, L. 1999.

20-25-1302. Definitions. As used in this part, the following definitions apply:

(1) "Advisory committee" means the Montana university system interunit benefits advisory committee established in 2-15-1530.

(2) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other related group benefits provided to employees and dependents of the Montana university system. The term does not include casualty insurance, marine insurance, property insurance, surety insurance, and title insurance.

History: En. Sec. 2, Ch. 256, L. 1999.

20-25-1303. Duties of commissioner — group benefits plans and employee premium levels not mandatory subjects for collective bargaining. (1) The commissioner shall:

(a) design group benefits plans and establish premium levels for employees;

(b) establish specifications for bids and accept or reject bids for administering group benefits plans;

(c) negotiate and administer contracts for group benefits plans;

(d) prepare an annual report that:

(i) describes the group benefits plans being administered; and

(ii) details the historical and projected program costs and the status of reserve funds; and

(e) adopt policies for the conduct of business of the advisory committee and to carry out the provisions of this part.

(2) (a) Except as provided in subsection (2)(b), the provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

(b) Group benefit plans designed under this part must include coverage for telehealth services as provided in 33-22-138.

(3) The design or modification of group benefits plans and the establishment of employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

History: En. Sec. 3, Ch. 256, L. 1999; amd. Sec. 2, Ch. 242, L. 2021.

20-25-1304. Functions of advisory committee. (1) The commissioner shall consult with the advisory committee before modifying Montana university system group benefits plans or before adjusting employee premium levels.

(2) The advisory committee shall meet at least semiannually to:

(a) review the existing employee group benefits plans;

(b) review claims experience, projections, and problems;

(c) recommend changes in plan design;

(d) recommend employee premium rates; and

(e) advise the commissioner on employee group benefits matters.

(3) The advisory committee is the exclusive means by which collective bargaining agents may participate in the design or modification of group benefits plans and the establishment of employee premium levels.

History: En. Sec. 5, Ch. 256, L. 1999.

Cross-References

Interunit Benefits Advisory Committee established, 2-15-1530.

20-25-1305 through 20-25-1309 reserved.

20-25-1310. Alternatives to conventional insurance for providing employee group benefits — requirements. (1) The commissioner may establish alternative plans to conventional insurance for providing Montana university system employee group benefits. In developing an alternative plan, the commissioner shall:

(a) maintain an alternative group benefits plan on an actuarially sound basis;

(b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of an alternative group benefits plan; and

(c) deposit all reserve funds, state contributions, interest earnings, and premiums paid to an alternative group benefits plan. The deposits must be expended for claims under the alternative plan and for costs for administering the alternative plan, including the costs of hiring consultants, actuaries, and auditors.

(2) Prior to implementation of an alternative group benefits plan, the commissioner shall present to the advisory committee evidence upon which the commissioner has concluded that the alternative method is more efficient, less costly, or otherwise superior to contracting for conventional insurance.

History: **En. Sec. 6, Ch. 256, L. 1999.**

20-25-1311 through 20-25-1314 reserved.

20-25-1315. Legislative findings and purpose. (1) The legislature finds that:

(a) air ambulance services provide a necessary, and sometimes lifesaving, means of transporting Montanans experiencing health emergencies;

(b) Montanans desire adequate access to air ambulance services;

(c) in many cases the high charges assessed by out-of-network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses; and

(d) the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which is interpreted as applying to air ambulance services.

(2) The purpose of 20-25-1315 through 20-25-1320 is to prevent Montanans from incurring excessive out-of-pocket expenses in out-of-network air ambulance situations in a manner that is not preempted by the Airline Deregulation Act.

History: **En. Sec. 1, Ch. 231, L. 2017.**

20-25-1316. Hold harmless. (1) If a covered person receives services from a non-Montana hospital-controlled out-of-network air ambulance service for an emergency medical condition, an insurer or health plan shall assume the covered person's responsibility, if any, for amounts charged in excess of allowed amounts for covered services and supplies, applicable copayments, coinsurance, and deductibles.

(2) An insurer or health plan that assumes a responsibility pursuant to subsection (1) shall notify the air ambulance service of that assumption no later than the date the insurer or health plan issues payment under subsection (4).

(3) If an air ambulance service receives notice pursuant to subsection (2), with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the air ambulance service may not:

(a) bill, collect, or attempt to collect from the covered person for the responsibility assumed under subsection (1);

(b) report to a consumer reporting agency that the covered person is delinquent on the responsibility assumed under subsection (1); or

(c) obtain a lien on the covered person's property in connection with the responsibility assumed under subsection (1).

(4) (a) An insurer or health plan is responsible for payment or denial of a claim within 30 days after receipt of a proof of loss, except as provided in 33-18-232(1). Within the timeframe provided in this subsection (4)(a), the insurer or health plan shall notify the covered person of the amount of deductible, coinsurance, or copayment that is the covered person's responsibility to pay.

(b) The insurer or health plan responsible under subsection (1) shall make payment based on:

(i) the billed charges of the air ambulance service;

(ii) another amount negotiated with the air ambulance service; or

(iii) the median amount the insurer or health plan would pay to an in-network air ambulance service for the services performed.

(5) If after payment is made under subsection (4) the insurer or health plan and air ambulance service dispute whether any further payment obligation exists, the insurer or health plan and air ambulance service shall enter into the dispute resolution process set forth in 20-25-1318 through 20-25-1320. After the independent dispute resolution process is exhausted, the aggrieved party may pursue any available remedies in a court of competent jurisdiction.

(6) For the purposes of this section:

(a) "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a person who possesses knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

(i) placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; and

(b) "insurer" means a health insurance issuer as defined in 33-22-140 and includes issuers of health insurance under Titles 2 and 20.

(7) Sections 20-25-1315 through 20-25-1320 do not apply if a covered person used an air ambulance membership subscription, as provided in 50-6-320, for the services provided by the air ambulance service.

History: En. Sec. 2, Ch. 231, L. 2017.

20-25-1317. Disclosures by air ambulance service. An out-of-network nonhospital-controlled air ambulance service must disclose by July 1 of each year any relationships or financial arrangements with health care providers, insurers, or health plans. This includes but is not limited to employment arrangements, ownership interests, first call agreements, and board memberships. This information must be filed with the department of public health and human services and also posted prominently on the commissioner of insurance's website. The air ambulance service must ensure the continued accuracy of this information throughout the year by submitting written updates within 5 days of any changes to the information.

History: En. Sec. 3, Ch. 231, L. 2017.

20-25-1318. Independent dispute resolution. (1) If an insurer or health plan and air ambulance service enter into dispute resolution, the procedure in 20-25-1319 is to be used to determine the fair market price of the services that are the subject of the claim.

(2) Payment of the fair market price calculated pursuant to 20-25-1319 constitutes payment in full of the claim.

(3) A determination under this section is not binding on the insurer or health plan and the air ambulance service.

(4) Unless otherwise agreed to by the parties, each party shall:

(a) bear its own attorney fees and costs incurred under the procedure provided in 20-25-1319; and

(b) equally bear all fees and costs of the independent reviewer.

(5) As used in this section, "fair market price" means the value of the services provided as determined by the independent reviewer based on the factors provided in 20-25-1319(6).

History: En. Sec. 4, Ch. 231, L. 2017.

20-25-1319. Independent dispute resolution procedure — exemptions. (1) To initiate a dispute resolution procedure under 20-25-1315 through 20-25-1320, the parties shall file a written notice of dispute with the insurance commissioner.

(2) Except as provided in subsection (3), within 30 days after the date of receipt of the notice of dispute, and if no independent reviewer is mutually agreed to by the insurer or health plan and air ambulance service under subsection (3), the insurance commissioner shall appoint an independent reviewer having the qualifications listed in 20-25-1320. The insurance commissioner shall select an independent reviewer randomly from a list established under 20-25-1320.

(3) The insurer or health plan and air ambulance provider may by mutual agreement select an independent reviewer. The parties shall notify the insurance commissioner of the mutually agreed independent reviewer prior to the appointment of an independent reviewer under subsection (2).

(4) An independent reviewer's sole substantive determination under this part is the fair market price of the services that are the subject of the claim.

(5) The independent reviewer may make procedural rulings necessary to regulate the proceedings.

(6) The factors to be used in the independent reviewer's determination are:

(a) the training, qualifications, and composition of the air ambulance service personnel;

(b) the fees for rotor wing or fixed wing services originating or provided entirely within the state of Montana that are:

(i) usually charged by the air ambulance service in Montana;

(ii) usually accepted as payment in full by the air ambulance service in Montana;

(iii) usually charged by other air ambulance services doing business in Montana;

(iv) usually accepted as payment in full by other air ambulance services doing business in Montana; and

(v) usually paid by the insurer or health plan for the service provided in Montana;

(c) whether the air ambulance service was provided in a rural or urban context;

(d) the applicable medicare rate of payment for the services that are the subject of the claim; and

(e) any other factors the independent reviewer determines to be relevant in determining fair market price in accordance with established precedent.

(7) Participation in a dispute resolution procedure under 20-25-1318 through 20-25-1320 exempts an insurer from 33-18-201(6) and (8) and 33-18-232(2).

History: En. Sec. 5, Ch. 231, L. 2017.

20-25-1320. Insurance commissioner duties — independent reviewer qualifications. (1) The insurance commissioner shall:

(a) approve any independent reviewer that is eligible to adjudicate disputes under 20-25-1315 through 20-25-1320;

(b) maintain a list of independent reviewers eligible to adjudicate disputes under 20-25-1315 through 20-25-1320;

(c) terminate approval of an independent reviewer and remove the independent reviewer from the list of approved independent reviewers upon determining that an independent reviewer no longer meets the requirements to adjudicate disputes; and

(d) adopt rules necessary to implement 20-25-1315 through 20-25-1320, including rules regarding discovery and other procedures regarding the dispute resolution process and eligibility of an independent reviewer.

(2) An individual is eligible to be an independent reviewer under 20-25-1315 through 20-25-1320 if the individual is knowledgeable and experienced in applicable principles of contract and insurance law.

(3) In approving an individual as an independent reviewer, the insurance commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an independent dispute resolution procedure under 20-25-1318 and 20-25-1319. A conflict of interest includes but is not limited to an ownership or direct familial interest in an insurer, a health care provider, or an air ambulance service that may be involved in an independent dispute resolution procedure under 20-25-1318 and 20-25-1319.

(4) In approving an individual as an independent reviewer, the insurance commissioner may not approve an individual who is currently serving in any matter as a hearing officer for the commissioner.

History: En. Sec. 6, Ch. 231, L. 2017.

Part 14
Self-Insured Student Health Plan

20-25-1401. Purpose. The purpose of this part is to establish the structure by which the Montana university system may develop a self-insured student health plan, to work in conjunction with available campus student health services for enrolled students of the Montana university system and their dependents, including students of a community college district, and to clarify that the plan is not regulated by or subject to the provisions of Title 33.

History: En. Sec. 1, Ch. 199, L. 2011.

20-25-1402 reserved.

20-25-1403. Authorization to establish self-insured health plan for students — requirements — exemption. (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

(a) maintain the plan on an actuarially sound basis;

(b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and

(c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) The provisions of 20-25-1315 through 20-25-1320 apply to any self-insured student health plan developed under this part.

(5) (a) Except as provided in subsection (5)(b), the provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

(b) A self-insured student health plan established under this part must include coverage for telehealth services as provided in 33-22-138.

History: **En. Sec. 2, Ch. 199, L. 2011; amd. Sec. 7, Ch. 363, L. 2013; amd. Sec. 7, Ch. 231, L. 2017; amd. Sec. 3, Ch. 242, L. 2021.**

20-25-1404. Authorization to finance self-insured health plan for students. The commissioner may, subject to the approval of the board of regents, finance the initial costs to establish the plan established pursuant to 20-25-1401 by using any of the following methods:

(1) authorizing a long-term loan of university funds. The loan must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(2) issuing and selling bonds and notes in whole or in part for this purpose; or

(3) using any other lawful means, including the assessment of student fees.

History: **En. Sec. 3, Ch. 199, L. 2011.**

Part 15
Expressive Activity on Campuses

20-25-1501. Definitions. As used in this part, the following definitions apply:

(1) (a) "Materially and substantially disrupt" means conduct by a person who acts purposely or knowingly to:

(i) significantly hinder the expressive activity of another person or group;

(ii) prevent the communication of an expressive activity; or

(iii) prevent the transaction of business at a lawful meeting, gathering, or procession by:

(A) engaging in fighting or other violent or unlawful behavior; or

(B) physically blocking or using threats of violence to prevent another person from attending, listening to, viewing, or otherwise participating in an expressive activity.

(b) The term does not include conduct that is protected under the first amendment of the United States constitution or under Article II, section 7, of the Montana constitution, including but not limited to:

(i) lawful protests in outdoor areas of campus; or

(ii) minor, brief, or fleeting nonviolent disruption of an event that is isolated or short in duration.

(2) (a) "Outdoor area of campus" means a generally accessible outside area of campus, such as grassy areas, walkways, or other similar common areas.

(b) The term does not include an outdoor area where access is restricted from a majority of the public.

(3) "Public postsecondary institution" means:

(a) a unit of the Montana university system as defined in 20-25-201; or

(b) a Montana community college, defined and organized as provided in 20-15-101.

(4) "Student" means a person who is enrolled full-time or part-time at a public postsecondary institution.

(5) "Student organization" means an officially recognized group or a group seeking official recognition at a public postsecondary institution that is composed of students who receive or are seeking to receive a benefit through the public postsecondary institution.

History: En. Sec. 1, Ch. 231, L. 2021.

20-25-1502. Protected expressive activities. Expressive activity protected under the provisions of this part includes but is not limited to any lawful oral, written, audiovisual, or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches, guest speakers, distribution of printed materials, carrying signs, and circulating petitions.

History: En. Sec. 2, Ch. 231, L. 2021.

20-25-1503. Public campus as public forum — free speech zone prohibited. (1) An outdoor area of campus of a public postsecondary institution is a public forum. A public postsecondary institution may not create a free speech zone or other designated outdoor areas of campus outside of which expressive activity is prohibited.

(2) A public postsecondary institution may maintain and enforce reasonable restrictions on the time, place, or manner of expressive activity. The restrictions must be narrowly tailored to serve a significant institutional interest. The restrictions must employ clear, published, content-neutral, and viewpoint-neutral criteria while providing for ample alternative means of expression. The restrictions must allow members of the public to spontaneously and contemporaneously assemble and distribute printed materials.

(3) This section may not be construed to limit the right of student expressive activity elsewhere on the public postsecondary institution's campus.

History: En. Sec. 3, Ch. 231, L. 2021.

20-25-1504. Noncommercial expressive activities — certain prohibitions allowable. (1) A public postsecondary institution shall permit a person to engage freely in noncommercial expressive activity on campus, subject to the provisions of 20-25-1503, as long as the person's expressive activity:

(a) is not unlawful; or

(b) does not materially and substantially disrupt the functioning of the public postsecondary institution.

(2) A public postsecondary institution may impose restrictions pursuant to 20-25-1503 on noncommercial expressive activity. Any restrictions imposed must allow for members of the public to spontaneously and contemporaneously assemble, speak, and distribute printed materials.

(3) This section may not be construed to prevent a public postsecondary institution from prohibiting, limiting, or restricting expressive activity that is not protected by the first amendment of the United States constitution or Article II, section 7, of the Montana constitution.

(4) This section may not be construed to permit a person to engage in conduct that materially and substantially disrupts another person's expressive activity.

History: En. Sec. 4, Ch. 231, L. 2021.

20-25-1505. Policies protecting free expression required — staff training. (1) A public postsecondary institution shall adopt policies to implement the provisions of this part.

The policies must address students' expectations and provide appropriate regulations regarding free expression and expressive activities on campus consistent with this part.

(2) A public postsecondary institution may develop materials, programs, and procedures to ensure that any person who has responsibility for the discipline or education of students, including administrators, campus security officers, residence life officials, and professors, understands the policies, regulations, and duties of the public postsecondary institution regarding free expression and expressive activities on campus consistent with this part.

History: En. Sec. 5, Ch. 231, L. 2021.

20-25-1506. Public accountability. (1) A public postsecondary institution may prepare a report to identify a course of action to be taken by the institution to implement the requirements of this part.

(2) If a public postsecondary institution prepares a report pursuant to this section:

(a) the report must be revised and republished whenever the public postsecondary institution makes any changes or updates to the policies and procedures related to free speech and expressive activity on campus;

(b) the report must be posted to the public postsecondary institution's website. The report must be:

(i) accessible within three links from the institution's website homepage;

(ii) searchable by keywords and phrases; and

(iii) accessible to the public without having to register or use a username, password, or other user identification.

(c) the contents of the report must include:

(i) a description of any barriers to or incidents of disruption of expressive activity on campus, including but not limited to any attempt to block or prohibit a speaker;

(ii) the nature of the barrier or disruption;

(iii) information about any disciplinary action taken against any member of the public who is responsible for a specific barrier or disruption, without disclosing personally identifiable information of any student found to be responsible; and

(iv) any other information the public postsecondary institution considers valuable for the public to evaluate whether the free expression and expressive activity rights of all members of the public have been protected equally and enforced consistently with the provisions of this part.

(3) (a) The public postsecondary institution may submit the report biennially to the governor and, as provided in 5-11-210, to the legislature at least 30 days prior to the start of each regular legislative session.

(b) If the public postsecondary institution is sued for an alleged violation of the complainant's first amendment rights, the public postsecondary institution may prepare and submit a supplementary report along with a copy of the complaint and any amended complaint to the governor and the legislature within 30 days of receiving the complaint or amended complaint.

History: En. Sec. 6, Ch. 231, L. 2021.

20-25-1507. Remedies. (1) A person or student organization who is aggrieved by a violation of this part may bring an action against a public postsecondary institution and any employees acting in their official capacities who were responsible for the violation and may seek appropriate relief, including but not limited to injunctive relief, monetary damages, reasonable attorney fees, and court costs.

(2) If a court finds that a public postsecondary institution has violated this part, the court shall award damages of at least $2,000 and not more than $75,000 to the aggrieved person or student organization.

(3) A person or student organization may assert a violation of this part as a defense or counterclaim in any disciplinary action or civil or administrative proceeding brought against the person or student organization.

(4) This section may not be construed to limit any other remedy available to any person or student organization.

History: En. Sec. 7, Ch. 231, L. 2021.

20-25-1508. Statute of limitations. An action brought for a violation of this part must be commenced within 1 year after the day the cause of action accrues. For the purposes of this section, each date that a violation of this part persists or a policy that violates this part is in effect constitutes a continuing violation, and the statute of limitations is tolled until the violation ceases.

History: En. Sec. 8, Ch. 231, L. 2021.

CHAPTER 26
STUDENT FINANCIAL ASSISTANCE

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20-26-1116. Repealed.
20-26-1117. Repealed.
20-26-1118. Repealed.
20-26-1119. Repealed.
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Part 15 — Health Care Provider Incentive Programs

20-26-1501. Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.
20-26-1502. Fee assessments — deposits.
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20-26-1504 through 20-26-1510 reserved.
20-26-1511. Institutional nursing incentive program.

Chapter Cross-References

Work-study program, Title 20, ch. 25, part 7.

Part 1
Resident Student Assistance
General Provisions

20-26-101. Short title. Parts 1 and 2 may be cited as "The Montana Resident Student Financial Aid Program Act".

History: En. 75-9401 by Sec. 1, Ch. 515, L. 1977; R.C.M. 1947, 75-9401; amd. Sec. 2, Ch. 300, L. 2019.

20-26-102. Purpose — legislative intent. (1) The purpose of parts 1 and 2 is to establish a program to provide financial aid to resident Montana postsecondary undergraduate and graduate students.

(2) In establishing the Montana resident student financial aid program, the legislature intends to collaborate with the board of regents and postsecondary institutions to create three types of aid programs for undergraduate students:

(a) an incentive program as established in 20-26-614 through 20-26-617 and funded by the state to encourage Montana resident students to pursue postsecondary credentials in science, technology, engineering, math, and health care fields that satisfy current and anticipated economic and workforce development needs in Montana;

(b) a merit program to recruit and retain the highest-achieving Montana resident students to units of the Montana university system, funded through tuition waivers, discounts, and other financial aid pursuant to policies adopted by the board of regents; and

(c) an access-to-higher-education program to provide scholarships and other financial aid funded by the foundations that have been established for the benefit of units of the university system and provided to Montana resident students who demonstrate financial need.

(3) The legislature intends to maximize federal need-based aid and work-study awards by providing sufficient state funding for federal matching requirements whenever possible.

(4) The legislature intends to continue its support of graduate exchange programs for Montana residents who are pursuing professional degrees outside the state.

History: En. 75-9402 by Sec. 2, Ch. 515, L. 1977; R.C.M. 1947, 75-9402; amd. Sec. 3, Ch. 300, L. 2019.

20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" means:

(a) a unit of the Montana university system as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal college located in the state of Montana.

(2) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

History: (1), (2) En. 75-9403 by Sec. 3, Ch. 515, L. 1977; Sec. 75-9403, R.C.M. 1947; (3) En. by Code Commissioner, 1979; R.C.M. 1947, 75-9403; amd. Sec. 7, Ch. 21, L. 1985; amd. Sec. 7, Ch. 243, L. 1997; amd. Sec. 35, Ch. 7, L. 2001; amd. Sec. 1, Ch. 39, L. 2013; amd. Sec. 4, Ch. 300, L. 2019.

Cross-References

Rules for determining residence, 1-1-215.

20-26-104. Montana resident student financial aid program created. There is a Montana resident student financial aid program administered by the commissioner of higher education.

History: **En. 75-9404 by Sec. 4, Ch. 515, L. 1977; R.C.M. 1947, 75-9404; amd. Sec. 2, Ch. 39, L. 2013; amd. Sec. 5, Ch. 300, L. 2019.**

20-26-105. Montana resident student financial aid program — reporting requirements. The commissioner of higher education shall submit an annual report to the education interim committee in accordance with 5-11-210 regarding the Montana resident student financial aid program. The report must provide information about the previous year and must include the progress and results achieved by:

(1) the incentive-based financial aid program pursuant to 20-26-102(2)(a), including but not limited to the number of Montana STEM scholarships awarded, the amount of scholarship funds awarded, the workforce development needs targeted by the Montana STEM scholarship program, the number and type of postsecondary credentials earned by Montana STEM scholarship recipients, and any measurable impacts on the Montana workforce;

(2) the merit-based financial aid program pursuant to 20-26-102(2)(b), including but not limited to the recruitment and retention of the highest-achieving Montana resident students, the number of merit-based financial aid recipients, the amount and type of merit-based financial aid awarded, the number and type of postsecondary credentials awarded to merit-based financial aid recipients, and any measurable impacts on the Montana workforce; and

(3) the access-based financial aid program pursuant to 20-26-102(2)(c), including but not limited to the number of access-based financial aid recipients, the amount and type of access-based financial aid awarded, the effect of access-based financial aid on the retention and credential completion by recipients of access-based financial aid, and any measurable impacts on the Montana workforce.

History: **En. Sec. 6, Ch. 300, L. 2019; amd. Sec. 59, Ch. 261, L. 2021.**

Part 2
Resident Student Assistance Administration of Program

Part Cross-References

Appointment of Commissioner of Higher Education, 2-15-1506.
Duties of Commissioner of Higher Education, 20-2-131.

20-26-201. Duties of commissioner of higher education relative to program. The commissioner of higher education shall:

(1) adopt policies to administer the Montana resident student financial aid program, including the establishment of criteria for student eligibility that must consider financial need;

(2) determine the amount of individual financial aid awards;

(3) establish procedures for fiscal control, fund accounting, and necessary reports, including the reports required under 20-26-105; and

(4) apply for, receive, and administer federal and private money.

History: **En. 75-9406 by Sec. 6, Ch. 515, L. 1977; R.C.M. 1947, 75-9406; amd. Sec. 3, Ch. 39, L. 2013; amd. Sec. 7, Ch. 300, L. 2019.**

Cross-References

Regents' rulemaking power not subject to Montana Administrative Procedure Act, 2-4-102.

20-26-202. Administrative costs. Administration costs not provided by the federal grant that are attributable to parts 1 and 2 must be negotiated and charged to the individual participants.

History: **En. 75-9408 by Sec. 8, Ch. 515, L. 1977; R.C.M. 1947, 75-9408; amd. Sec. 8, Ch. 300, L. 2019.**

20-26-203. Deposit of funds. Funds received by the commissioner of higher education for the Montana resident student financial aid program, including funds for the administration of parts 1 and 2, must be deposited in the state treasury.

History: **En. 75-9407 by Sec. 7, Ch. 515, L. 1977; R.C.M. 1947, 75-9407; amd. Sec. 9, Ch. 300, L. 2019.**

Cross-References

Deposits and investments, Title 17, ch. 6.

Parts 3 through 5 reserved

Part 6
Scholarship Programs

20-26-601. Repealed. Sec. 17, Ch. 300, L. 2019.

History: En. Sec. 1, Ch. 489, L. 2005; amd. Sec. 6, Ch. 385, L. 2015.

20-26-602. Repealed. Sec. 17, Ch. 300, L. 2019.

History: En. Sec. 2, Ch. 489, L. 2005; amd. Sec. 21, Ch. 1, Sp. L. May 2007; amd. Sec. 7, Ch. 385, L. 2015.

20-26-603. Definitions. As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(3) "Montana high school" means an accredited public or nonpublic high school.

(4) "Montana private college" means a nonprofit private educational institution:

(a) with its main campus and primary operations located within the state; and

(b) that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.

(5) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal college located in the state of Montana.

(6) "Scholarship" means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

(7) "STEM or health care major" means a major that is related to science, technology, engineering, mathematics, or health care. Specific qualifying majors are identified in board policy.

(8) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended.

History: En. Sec. 3, Ch. 489, L. 2005; amd. Sec. 22, Ch. 1, Sp. L. May 2007; amd. Sec. 4, Ch. 140, L. 2011; amd. Sec. 8, Ch. 385, L. 2015; amd. Sec. 10, Ch. 300, L. 2019.

20-26-604. Repealed. Sec. 17, Ch. 300, L. 2019.

History: En. Sec. 23, Ch. 1, Sp. L. May 2007.

20-26-605. Repealed. Sec. 17, Ch. 300, L. 2019.

History: En. Sec. 24, Ch. 1, Sp. L. May 2007; amd. Sec. 9, Ch. 385, L. 2015.

20-26-606. Public and private sources of funding — restrictions on use — accounting. (1) The board may accept donations from public or private sources for the Montana STEM scholarship program and shall distribute those funds in accordance with this part.

(2) Scholarship awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under 20-26-614.

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into the Montana STEM scholarship program account in the state special revenue fund established in 20-26-617 to pay for scholarships for students enrolled in postsecondary institutions.

(5) Each postsecondary institution that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary institution's administration of the scholarships and a complete accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the Montana STEM scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of the Montana STEM scholarship program. Funds from private sources may not be used as an offset to general fund appropriations.

History: En. Sec. 25, Ch. 1, Sp. L. May 2007; amd. Sec. 10, Ch. 385, L. 2015; amd. Sec. 11, Ch. 300, L. 2019.

20-26-607 through 20-26-610 reserved.

20-26-611. Repealed. Sec. 29, Ch. 1, Sp. L. May 2007.
History: En. Sec. 5, Ch. 489, L. 2005.

20-26-612. Repealed. Sec. 29, Ch. 1, Sp. L. May 2007.
History: En. Sec. 6, Ch. 489, L. 2005.

20-26-613. Repealed. Sec. 29, Ch. 1, Sp. L. May 2007.
History: En. Sec. 7, Ch. 489, L. 2005.

20-26-614. Montana STEM scholarship program. (1) There is a Montana STEM scholarship program. The program is administered by the board through the office of the commissioner of higher education.

(2) The purpose of the Montana STEM scholarship program is to provide an incentive for Montana high school students to prepare for, enter into, and complete degrees in postsecondary fields related to science, technology, engineering, mathematics, and health care, with the goals of increasing the number of STEM degree recipients participating in Montana's workforce and satisfying current and anticipated economic and workforce development needs in Montana.

(3) The board shall adopt policies and procedures for the administration of the Montana STEM scholarship program consistent with this part.

History: En. Sec. 1, Ch. 385, L. 2015; amd. Sec. 12, Ch. 300, L. 2019.

20-26-615. Eligibility requirements — ineligibility. (1) To be eligible for the Montana STEM scholarship, a student must:

(a) be a Montana resident who graduated from a Montana high school with a cumulative grade point average of at least 3.25;

(b) be eligible for in-state tuition pursuant to the board's policies;

(c) have completed a rigorous college preparation program, including 4 years of mathematics and 3 years of science;

(d) be enrolled full time in at least 15 credit hours at a postsecondary institution in the fall semester immediately following the student's graduation from high school;

(e) be seeking the student's first certificate or 2-year or 4-year degree at a postsecondary institution; and

(f) have declared a STEM or health care major as the student's intended course of study.

(2) A student is ineligible for the Montana STEM scholarship if the student:

(a) has failed to meet the federal Title IV selective service registration requirements;

(b) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(c) is incarcerated. A student may receive a Montana STEM scholarship upon release if the student meets all other eligibility requirements.

History: En. Sec. 2, Ch. 385, L. 2015.

20-26-616. STEM scholarship amounts — renewal requirements. (1) A student who meets the requirements of 20-26-615 will receive a $1,000 scholarship for the first academic year the student is enrolled at a postsecondary institution.

(2) A student who meets the requirements of this subsection will receive an additional scholarship for up to 3 subsequent academic years. To be eligible for the STEM scholarship in a subsequent academic year, the student must:

(a) have completed at least:

(i) 30 credit hours in the first academic year to be eligible for a $1,500 scholarship in the second academic year;

(ii) 60 credit hours by the end of the second academic year to be eligible for a $1,500 scholarship in the third academic year; and

(iii) 90 credit hours by the end of the third academic year to be eligible for a $2,000 scholarship in the fourth academic year;

(b) have maintained a grade point average of at least 3.0;

(c) be enrolled full time at the postsecondary institution in the current academic year; and

(d) continue to pursue a STEM or health care major.

(3) The legislature intends scholarships to be awarded at the full amounts provided for in this section. If the funds in the account established in 20-26-617 are insufficient to fully fund the program for a year, scholarships shall be prorated and awarded pursuant to 20-26-617(4).

History: En. Sec. 3, Ch. 385, L. 2015; amd. Sec. 13, Ch. 300, L. 2019.

20-26-617. Montana STEM scholarship program state special revenue account. (1) There is a Montana STEM scholarship program account within the state special revenue fund established in 17-2-102. The purpose of the account is to fund the Montana STEM scholarship program. The account is administered by the board through the office of the commissioner of higher education.

(2) There must be paid into the account the lottery net revenue calculated pursuant to 23-7-402.

(3) If the amount in this account is greater than the amount required to fund the scholarships in the amounts required by 20-26-616, the excess funds must be carried over and used to fund scholarships in the next fiscal year.

(4) If the amount in this account is less than required to fully fund the scholarships as required by 20-26-616, the board may prorate the amount of individual scholarships so that each eligible student still receives a Montana STEM scholarship.

(5) The board may use up to 1% of the funds transferred into the account in each fiscal year for costs related to administering the Montana STEM scholarship program.

(6) This account is statutorily appropriated, as provided in 17-7-502, to the board for the Montana STEM scholarship program established in this part.

History: En. Sec. 4, Ch. 385, L. 2015; amd. Sec. 14, Ch. 300, L. 2019.

20-26-618 through 20-26-620 reserved.

20-26-621. Short title. Sections 20-26-621 through 20-26-623 may be cited as the "Montana Promise Act".

History: En. Sec. 1, Ch. 234, L. 2017.

20-26-622. Purpose. The purpose of 20-26-621 through 20-26-623 is to increase college affordability and attainment for and decrease the amount of college debt incurred by Montana residents who utilize community and tribal colleges and 2-year institutions of the Montana university system.

History: En. Sec. 2, Ch. 234, L. 2017.

20-26-623. Montana promise grant program—student eligibility—administration. (1) There is a Montana promise grant program for the purpose of providing grants to students who meet the criteria for certain postsecondary programs pursuant to subsection (2). The program is administered by the board of regents through the office of the commissioner of higher education. The board of regents shall adopt policies for the administration of the program consistent with 20-26-621 through 20-26-623.

(2) To be eligible for a grant under the program, a student must:

(a) be enrolled at least half-time in a community or tribal college located in the state of Montana or in a 2-year institution of the Montana university system and taking courses that lead to:

(i) the ability to transfer to another postsecondary institution entering as at least a second-year student;

(ii) an associate degree offered by the institution; or

(iii) a professional credential offered by the institution;

(b) have been a resident of Montana for at least 12 months prior to applying for the grant program;

(c) have graduated from high school or received a secondary education equivalency certificate;

(d) have demonstrated academic ability through earning a cumulative grade point average of at least 2.5 in high school or through other measures as determined by the board of regents;

(e) have completed and submitted the free application for federal student aid for the current academic year and accepted all federal and state aid grants available; and

(f) have not completed more than 60 credit hours or the equivalent at a postsecondary institution or earned an associate degree.

(3) A student awarded a grant under the Montana promise grant program may receive a grant for no more than 2 years and is eligible for grants only if the student is making satisfactory progress as determined by the board of regents in courses described in subsection (2)(a), maintaining a cumulative grade point average of at least 2.7, and contributing a minimum of 8 hours of community service each semester.

(4) Montana promise grants must be awarded based on each term for which a student is eligible. The amount of the grant must be the greater of $75 per enrolled credit or the amount of tuition remaining due after any other federal, state, or private aid grants or waivers have reduced the tuition amount.

(5) (a) Except as provided in subsection (5)(b), the total amount in grants awarded under this section may not exceed $2 million in each fiscal year or any lesser amount appropriated by the legislature.

(b) The board of regents may accept donations from private or out-of-state public sources for this program and shall distribute any funding received in accordance with 20-26-621 through 20-26-623.

(6) If the amount of funding is not sufficient to provide grants to all eligible students, the board of regents may adopt policies for the prioritization of grants based on the following criteria in order:

(a) previous participation in the grant program with students who have previously received grants through the program receiving priority;

(b) financial need;

(c) students in programs for professional credentialing in high-demand labor markets; and

(d) recency of graduation from high school or completion of secondary education equivalency certification, with priority to more recent graduates and completers.

History: En. Sec. 3, Ch. 234, L. 2017.

20-26-624 through 20-26-632 reserved.

20-26-633. *(Temporary)* **Montana foster youth higher education assistance program — administration — eligible institutions.** (1) (a) Contingent on appropriation from the legislature, there is a Montana foster youth higher education assistance program administered by the board of regents through the commissioner of higher education for the purpose of helping youth who have aged out of the foster care system meet their educational, vocational, and professional goals without accruing debt.

(b) The Montana foster youth higher education assistance program shall allow and encourage each participating institution to develop a unique program to serve its eligible students pursuant to 20-26-634.

(c) The board of regents shall adopt policies for the administration of the program consistent with 20-26-634 and this section. The policies must include a provision that if funds appropriated for the Montana foster youth higher education assistance program are insufficient in any year, then financial assistance to students under 20-26-634(1)(d) is awarded on a first-come, first-served basis.

(2) An educational or training institution is eligible for a program grant if it is a community or tribal college located in the state of Montana, a 2-year or 4-year institution of the Montana university system, or a publicly funded vocational training program.

(3) The legislature intends that institutions receiving grants pursuant to subsection (2) may reapply to the program for additional grants.

(4) In accordance with 5-11-210, the commissioner shall report annually to the education interim committee and the children, families, health, and human services interim committee on the status and impacts of the grants described in this section. *(Terminates June 30, 2031—sec. 4, Ch. 629, L. 2023.)*

History: En. Sec. 1, Ch. 629, L. 2023.

20-26-634. *(Temporary)* **Montana foster youth higher education assistance program — program requirements — student participant eligibility.** (1) Institutions awarded a grant shall develop a program that:

(a) serves students who are eligible participants pursuant to subsection (2);

(b) provides on-campus, year-round room and board, including meal plans, to participants from the time they age out of foster care;

(c) provides support services to each participant, including help with admissions and enrollment, assistance completing financial aid paperwork and scholarship applications, life skills training, academic tutoring, job search and career assistance, and a community family or mentor for the purpose of creating a family-like and nurturing connection in the community;

(d) provides last dollar scholarship awards, not to exceed the cost of attendance, based on each term for which a student is eligible. The scholarship awards must be 50% funded by the Montana foster youth higher education assistance program and the remaining 50% funded by private academic unit funds.

(2) To be considered an eligible participant, a student must:

(a) be eligible for the federal John H. Chafee foster care for successful transition to adulthood program;

(b) be enrolled full time and taking courses that lead to:

(i) an associate or bachelor's degree offered by the institution; or

(ii) a vocational or entry-level professional credential or certification offered by the institution;

(c) have been a resident of Montana for at least 12 months prior to applying to the program;

(d) have graduated from high school or received a secondary education equivalency certificate; and

(e) have completed and submitted the free application for federal student aid for the current academic year and accepted all federal and state aid grants available.

(3) A participant shall:

(a) make satisfactory progress toward a degree or vocational or entry-level professional credential or certification;

(b) maintain a cumulative grade point average of at least 2.0;

(c) pay a nominal fee toward the cost of attendance, as determined by the institution;

(d) work a minimum of 10 hours per week from the second semester onward; and

(e) accept support services, including tutoring and life skills classes, offered by the institution. *(Terminates June 30, 2031—sec. 4, Ch. 629, L. 2023.)*

History: En. Sec. 2, Ch. 629, L. 2023.

Parts 7 through 10 reserved

Part 11

Guaranteed Student Loan Program

20-26-1101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agency" means the entity designated by the board to administer student loans.

(2) "Board" means the board of regents of higher education.

(3) "Eligible educational institution" means any institution approved by the United States secretary of education as eligible to participate in the student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(4) "Eligible lender" means any lender as defined under Title IV of the Higher Education Act of 1965, as amended.

(5) "Student loan program" means the program established by the board pursuant to this part.

History: En. Sec. 3, Ch. 691, L. 1979; amd. Sec. 1, Ch. 205, L. 1993; amd. Sec. 8, Ch. 243, L. 1997; amd. Sec. 8, Ch. 446, L. 1997; amd. Sec. 4, Ch. 39, L. 2013; amd. Sec. 1, Ch. 227, L. 2015.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

20-26-1102. Authorization to establish student loan program. (1) The board may establish and contract for the operation of a student loan program to make available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of a student loan program.

History: En. Sec. 4, Ch. 691, L. 1979; amd. Sec. 9, Ch. 243, L. 1997.

20-26-1103. Duties of board. In discharging its duties in relation to the student loan program, the board shall:

(1) act as guarantor and administrator on loans of money, upon terms and conditions that the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions or other lenders as eligible lenders upon their meeting the standards established by the board for making student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States secretary of education, for the administration of the student loan program;

(5) provide for the operation of the student loan program to conduct loan approval processing, essential and special loan servicing, preclaims assistance, supplemental preclaims assistance, claim processing and collections, and other services that would promote lender and school participation and loan availability to students;

(6) perform any other duties necessary for the administration of the student loan program and other student financial aid-related activities for the benefit of students as determined by the board.

History: En. Sec. 5, Ch. 691, L. 1979; amd. Sec. 2, Ch. 205, L. 1993; amd. Sec. 10, Ch. 243, L. 1997; amd. Sec. 5, Ch. 38, L. 2001.

20-26-1104. Repealed. Sec. 5, Ch. 39, L. 2013.

History: En. Sec. 6, Ch. 691, L. 1979; amd. Sec. 3, Ch. 205, L. 1993; amd. Sec. 11, Ch. 243, L. 1997.

20-26-1105. Student loan account. (1) There is a student loan account within the federal special revenue fund provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor and administrator, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the student loan account may not revert to the general fund at the close of any fiscal year.

History: En. Sec. 7, Ch. 691, L. 1979; amd. Sec. 20, Ch. 281, L. 1983; amd. Sec. 1, Ch. 134, L. 1987; amd. Sec. 4, Ch. 700, L. 1989; amd. Sec. 12, Ch. 243, L. 1997.

20-26-1106. No state obligation. The legislature is not obligated to appropriate any money to pay for student loan defaults. For the purpose of the student loan program, neither the board nor the agency may obligate the credit of the state.

History: En. Sec. 8, Ch. 691, L. 1979; amd. Sec. 13, Ch. 243, L. 1997.

Cross-References

Appropriation for private educational purpose prohibited, Art. V, sec. 11, Mont. Const.

20-26-1107. Dissolution — disposition of money. (1) The student loan program may not be dissolved until all contractual obligations have been satisfied and all loans have been paid by the borrower or, if in default, by the board or have been otherwise accounted for under Title IV of the Higher Education Act of 1965, as amended.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the student loan program not refundable to the federal government as provided by law vest in the state and must be credited to the general fund.

History: En. Sec. 9, Ch. 691, L. 1979; amd. Sec. 14, Ch. 243, L. 1997.

20-26-1108 through 20-26-1110 reserved.

20-26-1111. Access to governmental records. The board may request from any state or local government agency or officer information that would aid in the collection of delinquent student loans. All state and local government officials and employees shall cooperate with the board in supplying the information and shall on request supply the board with any relevant information regarding the location of the debtor. The board shall use the information only for purposes related to the collection of student loans or other educational debts.

History: En. Sec. 1, Ch. 358, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.
Records of university student, 20-25-515, 20-25-516.
Vital statistics information, Title 50, ch. 15.
Confidentiality of vehicle accident reports, 61-7-114.

20-26-1112 through 20-26-1114 reserved.

20-26-1115. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 1, Ch. 446, L. 1997.

20-26-1116. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 2, Ch. 446, L. 1997.

20-26-1117. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 3, Ch. 446, L. 1997; amd. sec. 11, Ch. 446, L. 1997.

20-26-1118. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 4, Ch. 446, L. 1997.

20-26-1119. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 5, Ch. 446, L. 1997.

20-26-1120. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 6, Ch. 446, L. 1997.

20-26-1121. Repealed. Sec. 2, Ch. 227, L. 2015.

History: En. Sec. 7, Ch. 446, L. 1997.

Parts 12 and 13 reserved

Part 14

Heritage of Montana Enterprise Act (Repealed)

20-26-1401. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 526, L. 1993.

20-26-1402. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 2, Ch. 526, L. 1993.

20-26-1403. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 526, L. 1993.

20-26-1404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 526, L. 1993.

20-26-1405 and 20-26-1406 reserved.

20-26-1407. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.

20-26-1408. Repealed. Sec. 128, Ch. 429, L. 1995.
History: **En. Sec. 6, Ch. 526, L. 1993.**

20-26-1409. Repealed. Sec. 128, Ch. 429, L. 1995.
History: **En. Sec. 7, Ch. 526, L. 1993.**

20-26-1410. Repealed. Sec. 128, Ch. 429, L. 1995.
History: **En. Sec. 8, Ch. 526, L. 1993.**

20-26-1411. Repealed. Sec. 128, Ch. 429, L. 1995.
History: **En. Sec. 9, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.**

Part 15
Health Care Provider Incentive Programs

20-26-1501. Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. There is an incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. Money is payable into the account as provided in 17-1-511, 20-25-810, and 20-26-1502. Income and earnings on the account must be redeposited in the account. The account must be administered by the board of regents as provided in this part.

History: **En. Sec. 1, Ch. 394, L. 1991; amd. Sec. 14, Ch. 389, L. 1999; amd. Sec. 3, Ch. 361, L. 2007; amd. Sec. 2, Ch. 436, L. 2017.**

20-26-1502. Fee assessments — deposits. (1) The board of regents may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact.

(2) Except as provided in 20-25-810, the fee may not exceed an amount equal to 16% of the annual individual medicine support fee paid by the state pursuant to 20-25-804.

(3) The fee provided for in 20-25-810 and this section must be assessed by the board of regents and deposited in the state special revenue account established in 20-26-1501.

History: **En. Sec. 2, Ch. 394, L. 1991; amd. Sec. 15, Ch. 389, L. 1999; amd. Sec. 4, Ch. 361, L. 2007; amd. Sec. 3, Ch. 436, L. 2017.**

20-26-1503. Use of incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. (1) The state special revenue account established in 20-26-1501 is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used to pay:

(a) the educational debts of physicians who practice in rural areas or medically underserved areas or for medically underserved populations of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining rural areas and medically underserved areas or populations of the state that qualify for assistance in physician recruitment. An eligible area or eligible population must demonstrate that a physician shortage exists or that the area or population has been unsuccessful in recruiting physicians in other ways.

(3) A physician from an area or serving a population determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-25-810 or 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area or serve the eligible population during the contract period.

(4) The maximum amount of educational debt payment that a physician practicing in a rural area or medically underserved area or for a medically underserved population may receive is $150,000 over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the state special revenue account established in 20-26-1501.

History: En. Sec. 3, Ch. 394, L. 1991; amd. Sec. 1, Ch. 89, L. 1997; amd. Sec. 16, Ch. 389, L. 1999; amd. Sec. 5, Ch. 361, L. 2007; amd. Sec. 1, Ch. 310, L. 2017; amd. Sec. 4, Ch. 436, L. 2017.

20-26-1504 through 20-26-1510 reserved.

20-26-1511. Institutional nursing incentive program. (1) There is a loan reimbursement program for an individual who is licensed to practice as a registered professional nurse pursuant to 37-8-406 and who works at the Montana state prison or the Montana state hospital.

(2) (a) The board of regents shall, subject to available appropriations, pay up to 50% of a loan balance of $30,000 for a registered professional nurse working at the Montana state prison or the Montana state hospital who applies for the program and submits proof of the balance related to loans for nursing education.

(b) The reimbursement under this section is limited to a maximum of $3,750 a year for 4 years and must be based on a participant's actual loan balance.

(c) An individual with a loan balance of less than $1,000 is not eligible for the program provided for in this section.

(3) (a) The board of regents shall reimburse a participant in the loan reimbursement program at the end of every 12-month period that the participant works at either the Montana state prison or the Montana state hospital. The amount to be reimbursed as determined in subsection (2) must be reimbursed in equal annual installments over 4 years as long as the participant continues to work at either facility.

(b) A participant who works less than a full 12-month period must receive a reimbursement that is prorated to reflect the amount of time worked during that 12-month period.

(c) The reimbursement payment by the board of regents must be to the participant and the loan institution.

History: En. Sec. 1, Ch. 379, L. 2009.

Cross-References

Department of public health and human services, 53-1-602.
Location and primary function of hospital, 53-21-601.
Location and function of prisons — definitions, 53-30-101.

CHAPTERS 27 THROUGH 29
RESERVED

CHAPTER 30
POSTSECONDARY EDUCATIONAL INSTITUTIONS
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Administration by Department of Commerce (Repealed)

Part 3 — Licenses and Permits (Repealed)

Part 4 — Remedies and Enforcement (Repealed)

Part 1
General Provisions
(Repealed)

20-30-101. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. Secs. 1, 2, Ch. 296, L. 1974; Secs. 75-9201, 75-9202, R.C.M. 1947; (2)(a)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9201, 75-9202; amd. Sec. 1, Ch. 94, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.

20-30-102. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9203 by Sec. 3, Ch. 296, L. 1974; amd. Sec. 1, Ch. 211, L. 1975; R.C.M. 1947, 75-9203; amd. Sec. 1, Ch. 469, L. 1979; amd. Sec. 2, Ch. 94, L. 1981.

20-30-103. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9204 by Sec. 4, Ch. 296, L. 1974; R.C.M. 1947, 75-9204.

20-30-104. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(2), (3).

20-30-105. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9218 by Sec. 18, Ch. 296, L. 1974; R.C.M. 1947, 75-9218.

Part 2
Administration by Department of Commerce (Repealed)

20-30-201. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9206 by Sec. 6, Ch. 296, L. 1974; R.C.M. 1947, 75-9206.

20-30-202. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9207 by Sec. 7, Ch. 296, L. 1974; R.C.M. 1947, 75-9207.

20-30-203. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9208 by Sec. 8, Ch. 296, L. 1974; R.C.M. 1947, 75-9208.

Part 3
Licenses and Permits (Repealed)

20-30-301. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9209 by Sec. 9, Ch. 296, L. 1974; R.C.M. 1947, 75-9209.

20-30-302. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9210 by Sec. 10, Ch. 296, L. 1974; R.C.M. 1947, 75-9210.

20-30-303. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9211 by Sec. 11, Ch. 296, L. 1974; R.C.M. 1947, 75-9211.

20-30-304. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9212 by Sec. 12, Ch. 296, L. 1974; amd. Sec. 2, Ch. 211, L. 1975; R.C.M. 1947, 75-9212.

20-30-305. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9216 by Sec. 16, Ch. 296, L. 1974; amd. Sec. 38, Ch. 266, L. 1977; R.C.M. 1947, 75-9216.

20-30-306. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9217 by Sec. 17, Ch. 296, L. 1974; R.C.M. 1947, 75-9217.

Part 4
Remedies and Enforcement (Repealed)

20-30-401. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9215 by Sec. 15, Ch. 296, L. 1974; amd. Sec. 37, Ch. 266, L. 1977; R.C.M. 1947, 75-9215.

20-30-402. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9219 by Sec. 19, Ch. 296, L. 1974; R.C.M. 1947, 75-9219.

20-30-403. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9220 by Sec. 20, Ch. 296, L. 1974; R.C.M. 1947, 75-9220.

20-30-404. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9221 by Sec. 21, Ch. 296, L. 1974; R.C.M. 1947, 75-9221.

20-30-405. Repealed. Sec. 2, Ch. 364, L. 1997.

History: En. 75-9222 by Sec. 22, Ch. 296, L. 1974; R.C.M. 1947, 75-9222; amd. Sec. 14, Ch. 384, L. 1979.

CHAPTER 31
FIRE SERVICES TRAINING SCHOOL

Part 1 — General Provisions
20-31-101. Definitions.
20-31-102. Fire services training school — creation — supervision by board of regents.
20-31-103. Purpose of school.
20-31-104. Coordination with other agencies.

Part 2 — Director
20-31-201. Director responsible to board.
20-31-202. Duties of director.

Part 3 — Advisory Council
20-31-301. Organization — procedural rules — compensation of members.
20-31-302. Duties.

Part 4 — Miscellaneous Provisions
20-31-401. Acceptance of gifts and grants — contractual agreements.
20-31-402. Cost recovery fee.

Chapter Cross-References

Firefighters, Title 7, ch. 33, parts 22, 23, and 41.
Fire protection equipment, Title 50, ch. 39.
Fire safety in public buildings, Title 50, ch. 61.
Fire hazards, Title 50, ch. 62.
Investigation of fires, Title 50, ch. 63.

Part 1
General Provisions

20-31-101. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of regents provided for in Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(2) "Council" means the fire services training advisory council provided for in 2-15-1519.

(3) "Director" means the director of the fire services training school provided for in 2-15-1518.

History: En. by Code Commissioner, 1979; amd. Sec. 3, Ch. 20, L. 1989.

20-31-102. Fire services training school — creation — supervision by board of regents. There is a fire services training school. The fire services training school is allocated to the board of regents for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of regents. The general supervision of the school is vested in the board of regents.

History: En. 75-7716 by Sec. 1, Ch. 104, L. 1977; R.C.M. 1947, 75-7716; amd. Sec. 4, Ch. 20, L. 1989.

20-31-103. Purpose of school. The purpose of the fire services training school is to:

(1) provide fire service personnel with professional training;

(2) identify new methods of fire prevention and suppression and disseminate information about them;

(3) provide a resource center for use by local fire services;

(4) provide testing and certification for personnel and apparatus; and

(5) coordinate fire services training in the state.

History: En. 75-7717 by Sec. 2, Ch. 104, L. 1977; R.C.M. 1947, 75-7717; amd. Sec. 2, Ch. 6, L. 1987.

20-31-104. Coordination with other agencies. (1) The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of regents.

(2) The fire services training school may make its resources available, upon request of a local fire protection entity, for assistance in local emergencies.

History: En. 75-7725 by Sec. 10, Ch. 104, L. 1977; R.C.M. 1947, 75-7725; amd. Sec. 5, Ch. 20, L. 1989; amd. Sec. 1, Ch. 38, L. 2007.

Part 2
Director

20-31-201. Director responsible to board. The director is responsible to the board for carrying out the provisions of this chapter.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

20-31-202. Duties of director. The director shall appoint a staff and execute policies and programs established by the board of regents for the fire services training school. The director is responsible for the direction of staff and operation of the school.

History: En. 75-7722 by Sec. 7, Ch. 104, L. 1977; R.C.M. 1947, 75-7722; amd. Sec. 6, Ch. 20, L. 1989.

Part 3
Advisory Council

20-31-301. Organization — procedural rules — compensation of members. (1) The members of the fire services advisory council shall elect a presiding officer, a vice presiding officer, and other officers considered advisable by the council. The terms of the officers must be established by the council.

(2) The council shall adopt rules governing its procedures, subject to approval of the board of regents.

(3) Members of the council must receive compensation under 2-18-501 through 2-18-503.

History: En. 75-7719 by Sec. 4, Ch. 104, L. 1977; R.C.M. 1947, 75-7719; amd. Sec. 7, Ch. 20, L. 1989; amd. Sec. 346, Ch. 56, L. 2009.

20-31-302. Duties. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.

History: En. 75-7720 by Sec. 5, Ch. 104, L. 1977; R.C.M. 1947, 75-7720.

Part 4
Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements. The board of regents may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

History: En. 75-7723 by Sec. 8, Ch. 104, L. 1977; R.C.M. 1947, 75-7723; amd. Sec. 8, Ch. 20, L. 1989.

20-31-402. Cost recovery fee. The board of regents may establish a cost recovery fee for training of commercially employed firefighters, and the fees must be deposited in accordance with the higher education fund structure.

History: En. 75-7724 by Sec. 9, Ch. 104, L. 1977; R.C.M. 1947, 75-7724; amd. Sec. 9, Ch. 20, L. 1989; amd. Sec. 1, Ch. 146, L. 2017.

CHAPTER 32
MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

Part 1 — General

20-32-101. Purpose — definition.
20-32-102. Agency cooperation — responsibilities.
20-32-103. Fee collection and disposition for operational costs.
20-32-104. Apportionment of costs.

Part 1
General

20-32-101. Purpose — definition. (1) The purpose of this part is to establish a Montana educational telecommunications network.

(2) For the purposes of this part, "network" means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties.

History: En. Sec. 1, Ch. 622, L. 1991; amd. Sec. 21, Ch. 308, L. 1995.

20-32-102. Agency cooperation — responsibilities. (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent's share of the network costs to the department of administration, as provided in 20-32-104;

(i) coordination with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determination of kinds of equipment, inservice, and district accounting necessary to implement the provisions of this part for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network to students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of this part for the university system and community colleges.

History: **En. Sec. 2, Ch. 622, L. 1991; amd. Sec. 22, Ch. 308, L. 1995.**

20-32-103. Fee collection and disposition for operational costs. As a condition of participation in the network, the Montana university system and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed $5 for each full-time equivalent student enrolled in the units or colleges. The funds collected must be deposited with the commissioner of higher education for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs.

History: **En. Sec. 3, Ch. 622, L. 1991; amd. Sec. 1, Ch. 547, L. 1993; amd. Sec. 23, Ch. 308, L. 1995; amd. Sec. 15, Ch. 243, L. 1997.**

20-32-104. Apportionment of costs. The superintendent of public instruction and the commissioner of higher education shall share on a prorated basis according to the related student counts any costs incurred by the department of administration for the purposes of 20-32-102(3).

History: **En. Sec. 4, Ch. 622, L. 1991.**

TITLE 21
RESERVED

TITLE 22

LIBRARIES, ARTS, AND ANTIQUITIES

Ch.
1. Libraries.
2. Arts.
3. Antiquities.

CHAPTER 1
LIBRARIES

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Chapter Cross-References

Legislative provision for libraries authorized, Art. X, sec. 1, Mont. Const.
School libraries required, 20-7-202.

Part 1
State Library Commission

Part Cross-References

Library Commission allocated to State Board of Education, 2-15-1511.

22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

(a) the state superintendent of public instruction or the superintendent's designee;

(b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a presiding officer from its membership.

(4) The members of the commission must be compensated and receive travel expenses as provided for in 2-15-124.

History: En. Sec. 1, Ch. 184, L. 1929; re-en. Sec. 1575.1, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1, Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965; amd. Sec. 23, Ch. 439, L. 1975; R.C.M. 1947, 44-127; amd. Sec. 1, Ch. 172, L. 1983; amd. Sec. 7, Ch. 650, L. 1985; amd. Sec. 347, Ch. 56, L. 2009.

22-1-102. Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 2, Ch. 184, L. 1929; re-en. Sec. 1575.2, R.C.M. 1935; amd. Sec. 2, Ch. 91, L. 1945; amd. Sec. 2, Ch. 55, L. 1961; amd. Sec. 7, Ch. 453, L. 1977; R.C.M. 1947, 44-128.

22-1-103. State library commission — authority. The state library commission may:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state that propose to establish libraries, as to the best means of establishing and improving those libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) (a) accept and expend in accordance with the terms of a grant any grant of federal funds that is available to the state for library purposes;

(b) accept, receive, and administer any gifts, donations, bequests, and legacies made to the Montana state library. Unless otherwise provided by the donor, gifts, donations, bequests, and legacies must be deposited in the Montana state library trust established in 22-1-225.

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds must be disbursed;

(6) provide library services for the blind and for individuals with physical disabilities;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners, develop standards for public libraries, and adopt rules for the certification of librarians;

(9) designate areas for and establish federations of libraries.

History: En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part); amd. Sec. 4, Ch. 339, L. 1995; amd. Sec. 21, Ch. 472, L. 1997; amd. Sec. 2, Ch. 73, L. 2005.

Cross-References

Library use privileges, 22-1-311.

Part 2
State Library

Part Cross-References

State visual, aural, and other educational media library, 20-7-201.
Montana Geospatial Information Act, Title 90, ch. 1, part 4.
Natural resource information system and natural heritage program, Title 90, ch. 15.

22-1-201. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

History: En. 44-126.1 by Sec. 1, Ch. 3, L. 1977; R.C.M. 1947, 44-126.1.

22-1-202. Basic library services account. There is a basic library services account in the state special revenue fund established by 17-2-102 to be administered by the state library for providing basic library services.

History: En. Sec. 5, Ch. 351, L. 2017; amd. Sec. 1, Ch. 138, L. 2021.

22-1-203. Digital library services special revenue account. (1) There is an account in the state special revenue fund established in 17-2-102 to the credit of the state library to be known as the digital library services state special revenue account.

(2) There must be deposited in the account:

(a) quarterly payments from state agencies for use of the natural resource information system established in 90-15-301;

(b) legislative transfers to the account; and

(c) any funds allocated to the account.

(3) The purpose of the fund is to provide digital library services throughout the state.

History: En. Sec. 1, Ch. 451, L. 2019.

22-1-204 through 22-1-210 reserved.

22-1-211. Definitions. As used in this part, the following definitions apply:

(1) "Depository library" means a library contracted by the state library under 22-1-212(2) to provide the general public access to state publications.

(2) "State agency" means any entity established or authorized by law to govern operations of the state, such as a state office, officer, department, division, section, bureau, board, commission, council, and agency of the state and all subdivisions of each.

(3) (a) "State publication" means any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark.

(b) The term does not include information intended only for distribution to contractors or grantees of the agency, persons within the agency, or members of the public under 2-6-1003 or information produced by a state agency that is intended strictly for internal administrative or operational purposes.

History: En. Sec. 1, Ch. 261, L. 1967; R.C.M. 1947, 44-132; amd. Sec. 2, Ch. 95, L. 2007; amd. Sec. 47, Ch. 348, L. 2015.

22-1-212. Administration of state publications depository library program — rulemaking. (1) The state library shall administer a state publications depository library program to identify, acquire, catalog, preserve, and provide access to state publications.

(2) The state library may enter into contracts with other libraries to carry out the provisions of the state publications depository library program.

(3) The state library commission shall adopt rules necessary to carry out the provisions of this part.

History: En. Sec. 2, Ch. 261, L. 1967; R.C.M. 1947, 44-133; amd. Sec. 3, Ch. 95, L. 2007.

22-1-213. State publications — notification and availability requirements. State agencies shall notify the state library of their state publications and shall make their state publications available to the state library as provided by rule. The state library shall, if requested by the agency, reimburse any state agency for state publications required to be made available when the quantity desired will necessitate unreasonable expense to the agency.

History: En. Sec. 3, Ch. 261, L. 1967; R.C.M. 1947, 44-134; amd. Sec. 4, Ch. 95, L. 2007.

Cross-References

Distribution of Session Laws, 5-11-203.
Printing and publications of state agencies and offices, 18-7-101.

22-1-214. Repealed. Sec. 7, Ch. 95, L. 2007.

History: En. Sec. 4, Ch. 261, L. 1967; R.C.M. 1947, 44-135.

22-1-215. Repealed. Sec. 7, Ch. 95, L. 2007.

History: En. Sec. 5, Ch. 261, L. 1967; R.C.M. 1947, 44-136.

22-1-216. Repealed. Sec. 7, Ch. 95, L. 2007.

History: En. Sec. 6, Ch. 261, L. 1967; R.C.M. 1947, 44-137.

22-1-217. Repealed. Sec. 7, Ch. 95, L. 2007.

History: En. Sec. 7, Ch. 261, L. 1967; R.C.M. 1947, 44-138.

22-1-218. Exemptions. (1) This part does not apply to:

(a) the state law library in connection with the collection described under 22-1-501;

(b) the code commissioner in connection with duties under Title 1, chapter 11, as amended; and

(c) the legislative services division in connection with duties under 5-11-203, as amended; and

(d) the Montana university system.

(2) The state library may, at its option and without causing the university system to incur expense, collect, catalog, and make available selected publications of units of the Montana university system.

History: En. Sec. 8, Ch. 261, L. 1967; amd. Sec. 2, Ch. 3, L. 1977; R.C.M. 1947, 44-139; amd. Sec. 11, Ch. 138, L. 1979; amd. Sec. 16, Ch. 79, L. 1983; amd. Sec. 61, Ch. 545, L. 1995; amd. Sec. 6, Ch. 95, L. 2007.

Cross-References

Distributions by Supreme Court, 3-2-604.

22-1-219. Permanent public access to state publications. The state library shall routinely notify depository libraries of recently acquired state publications. The state library shall coordinate with state agencies and depository libraries to ensure permanent public access to state publications. The state library shall offer state publications that it removes from its collection to the Montana historical society, which shall determine which state publications must be preserved as provided for in 22-3-203.

History: En. Sec. 5, Ch. 95, L. 2007.

22-1-220 through 22-1-224 reserved.

22-1-225. Montana state library trust — interest retention. (1) There is an account in the governmental fund category state special revenue fund type to be known as the Montana state library trust, to be used as provided in 22-1-226.

(2) Interest and earnings of the account must be retained by the account.

History: En. Sec. 1, Ch. 339, L. 1995; amd. Sec. 15, Ch. 34, L. 2001.

Cross-References

Fund structure, 17-2-102.

Authority of State Library Commission, 22-1-103.

22-1-226. Use of Montana state library trust. (1) The principal of the Montana state library trust established in 22-1-225 is subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations received pursuant to 22-1-103 must be placed in the Montana state library trust.

(3) Interest earned on the principal of the Montana state library trust may be used for providing library service to Montanans, including those who, because of disability, cannot read standard print.

(4) Revenue that is not expended on the service authorized in subsection (3) and that is not expended at the end of each fiscal year remains in the Montana state library trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the library from the Montana state library trust.

History: En. Sec. 2, Ch. 339, L. 1995; amd. Sec. 16, Ch. 34, L. 2001.

22-1-227 through 22-1-229 reserved.

22-1-230. Administration of state reference network — rulemaking. (1) The state library shall administer a state reference network to provide real-time geospatial location data from any location within the network.

(2) The state library may enter into contracts with other agencies and the private sector to carry out the provisions of the state reference network.

(3) The state library commission shall adopt rules necessary to carry out the provisions of 22-1-231 and this section.

History: En. Sec. 1, Ch. 425, L. 2023.

22-1-231. Enterprise fund account for state reference network operations. (1) There is an account of the enterprise fund type, as described in 17-2-102(2)(a), to be known as the Montana state reference network account.

(2) (a) The account is to the credit of the state library and is to be used for operation of the state reference network. All fees collected by the state library for the use of the state reference network must be deposited in the account to be used for state reference network operations by the state library.

(b) Revenue collected from fees for the use of the state reference network pursuant to 22-1-230 must be deposited in the account.

(c) All interest and earnings on money deposited in the account must be credited to the account and used for state reference network operations by the state library.

History: En. Sec. 2, Ch. 425, L. 2023.

Part 3
Free Public Libraries

Part Cross-References

Tax exemption for public libraries, 15-6-201.

22-1-301. Definitions. Unless otherwise provided, the following definitions apply in this part:

(1) "City" means city or town.

(2) "Commission" means the state library commission.

(3) "Public library" means a library created under:

(a) 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles; or

(b) Title 7.

History: En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227; amd. Sec. 8, Ch. 670, L. 1989; amd. Sec. 1, Ch. 356, L. 1991; amd. Sec. 1, Ch. 47, L. 2009.

22-1-302. Purpose. It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.

22-1-303. Creation of public library. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) A public library may be established by a petition that is signed by not less than 10% of the resident taxpayers whose names appear upon the last-completed assessment roll of the city or county and that is filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which it may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors at the next general election the question of whether a free public library is to be established.

(b) If a petition is submitted for a city, the petition must be signed by resident taxpayers of the city.

(c) If a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city that is located in the county and that may already have established a free public library for the city.

(d) If the petition specifically asks that a special election be called and the petition is signed by 35% of the resident freeholders affected by the petition, then the governing body shall, upon receipt of the petition, immediately set a date for a special election. The special election must be held in conjunction with a regular or primary election.

(e) If at the election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain the library or to contract with any city or county for library service to be rendered to the inhabitants of the city or county.

History: **En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219; amd. Sec. 65, Ch. 387, L. 1995.**

22-1-304. Tax levy — special library fund — bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least 85 days prior to the election at which the question will be voted on, and, pursuant to the deadline in 13-1-504, the election may not be held less than 85 days after the resolution is adopted.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at an election conducted as provided in 15-10-425 the question of imposing the mill levy. The petition must be delivered to the governing body at least 85 days prior to the election at which the question will be voted on.

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.

History: **En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220; amd. Sec. 1, Ch. 431, L. 1983; amd. Sec. 39, Ch. 250, L. 1985; amd. Sec. 1, Ch. 333, L. 1999; amd. Sec. 123, Ch. 584, L. 1999; amd. Sec. 31, Ch. 495, L. 2001; amd. Sec. 128, Ch. 574, L. 2001; amd. Sec. 16, Ch. 453, L. 2005; amd. Sec. 232, Ch. 49, L. 2015.**

Cross-References

Tax exemption for public libraries, 15-6-201.

22-1-305. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

History: **En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.**

22-1-306. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: **En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.**

22-1-307. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: **En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.**

22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the presiding officer of the board of county commissioners, with the advice and consent of the board, shall appoint a board of trustees for the county library.

(2) The library board must consist of five trustees. Not more than one member of the governing body may be, at any one time, a member of the board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments must be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there must be appointed before July 1 of each year, in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees may not serve more than two full terms in succession.

(5) Following the appointments, in July of each year, the trustees shall meet and elect a presiding officer and other officers that they consider necessary, for 1-year terms. Vacancies in the board of trustees must be filled for the unexpired term in the same manner as original appointments.

History: **En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221; amd. Sec. 348, Ch. 56, L. 2009.**

22-1-309. Trustees — powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: **Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.**

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.
Power to accept gifts, 20-6-601.
Application of other school district provisions, 20-15-403.

22-1-310. Chief librarian — personnel — compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

History: **En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.**

22-1-311. Use of library — privileges. Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: **En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.**

Cross-References

Authority of State Library Commission, 22-1-103.

22-1-312. Cooperation and merger. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

History: **En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.**

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes. After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

History: **En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.**

22-1-314. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: **En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.**

22-1-315. City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

History: **En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.**

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library must be apportioned between or among the county and cities on the basis agreed upon in the contract.

(3) Subject to 15-10-420, the governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as provided in the contract, has custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to the designated treasurer all money collected for the joint city-county library.

(5) The contract must provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1; amd. Sec. 124, Ch. 584, L. 1999.

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-317. City-county library — board of trustees. (1) A joint city-county library must be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees may not serve more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a presiding officer and other officers that they consider necessary, for 1-year terms.

(5) The board of trustees has the same powers and duties as the board of trustees of a city library or a county library.

History: En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2; amd. Sec. 349, Ch. 56, L. 2009.

22-1-318 through 22-1-324 reserved.

22-1-325. Short title. Sections 22-1-325 through 22-1-331 may be cited as the "Information Access Montana Act".

History: En. Sec. 1, Ch. 670, L. 1989.

22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317 or an accredited tribal college library that provides services to the public.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under part 7 of this chapter. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

History: En. Sec. 2, Ch. 670, L. 1989; amd. Sec. 2, Ch. 356, L. 1991; amd. Sec. 1, Ch. 203, L. 2005; amd. Sec. 1, Ch. 621, L. 2023.

22-1-327. State aid — per capita — per square mile. (1) The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

(2) The total amount of annual per capita and per square mile funding to public libraries for each fiscal year is the base amount of 50 cents multiplied by the total number of residents of the state as determined by the most recent decennial census of the population produced by the U.S. bureau of the census.

(3) The amount determined under subsection (2) is statutorily appropriated, as provided in 17-7-502, from the general fund to the commission for distribution as state aid to public libraries. *(Subsections (2) and (3) terminate July 1, 2029—sec. 4, Ch. 621, L. 2023.)*

History: En. Sec. 3, Ch. 670, L. 1989; amd. Sec. 2, Ch. 203, L. 2005; amd. Sec. 2, Ch. 244, L. 2013; amd. Sec. 2, Ch. 621, L. 2023.

22-1-328. Statewide interlibrary resource-sharing program. The commission shall establish a statewide interlibrary resource-sharing program. The purpose of the program is to administer funds appropriated by the legislature to support and facilitate resource-sharing among libraries in Montana, including but not limited to public libraries, public library districts, libraries operated by public schools or school districts, libraries operated by public colleges or universities, tribal libraries, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit, private medical, educational, or research institutions.

History: En. Sec. 4, Ch. 670, L. 1989; amd. Sec. 1, Ch. 183, L. 1999; amd. Sec. 2, Ch. 47, L. 2009.

22-1-329. Statewide library access program. The commission shall develop a voluntary statewide library access program whereby a participating library may allow access to the library's materials and services by patrons registered and in good standing with another library.

History: En. Sec. 5, Ch. 670, L. 1989; amd. Sec. 3, Ch. 47, L. 2009.

22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries and public library districts on a per capita and per square mile basis, as provided in 22-1-327;

(2) the statewide library access program provided for in 22-1-329;

(3) the statewide interlibrary resource-sharing program provided for in 22-1-328;

(4) distribution of base grants provided for in 22-1-331; and

(5) the composition of the library federation board of trustees, as provided in 22-1-404.

History: En. Sec. 6, Ch. 670, L. 1989; amd. Sec. 2, Ch. 183, L. 1999; amd. Sec. 3, Ch. 203, L. 2005; amd. Sec. 4, Ch. 47, L. 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

22-1-331. Base grants. The commission shall provide a base grant for each public library to support the cooperative activities and services of the six library federations in the state.

History: En. Sec. 7, Ch. 670, L. 1989.

Part 4
Library Systems

22-1-401. Policy. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).

22-1-402. Library federations — definition. (1) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public, school, special, college, or university library or town, city, or county within the federation area may participate in a federation.

(2) The governing body of any library may agree to participate in the federation. The participating entities may retain the autonomy over their respective libraries.

(3) The expense of providing library services for the library federation must be based on funds received from the state or participating libraries.

(4) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the federation's bylaws.

(5) A federation may contract with other federations, libraries, or the state library to provide federation services.

History: En. Sec. 1, Ch. 132, L. 1939; amd. Sec. 2, Ch. 357, L. 1974; R.C.M. 1947, 44-212; amd. Sec. 1, Ch. 374, L. 1981; amd. Sec. 66, Ch. 387, L. 1995; amd. Sec. 3, Ch. 183, L. 1999; amd. Sec. 1, Ch. 80, L. 2001; amd. Sec. 3, Ch. 73, L. 2005.

22-1-403. Repealed. Sec. 5, Ch. 73, L. 2005.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963; amd. Sec. 3, Ch. 357, L. 1974; R.C.M. 1947, 44-213; amd. Sec. 2, Ch. 80, L. 2001.

22-1-404. Board of trustees — coordinator. (1) In a library federation, there must be a board of trustees, with advisory powers only, appointed according to the federation's bylaws. The state library commission, provided for in 22-1-101, shall adopt rules governing the composition of the federation board of trustees. A majority of the members of each federation board of trustees must be trustees of a public library, as defined in 22-1-326.

(2) The federation membership shall appoint a coordinator of the federation who shall serve as a nonvoting member of the federation board of trustees.

History: (1)En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974; Sec. 44-214, R.C.M. 1947; (2)En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; Sec. 44-131, R.C.M. 1947; R.C.M. 1947, 44-131(part), 44-214; amd. Sec. 4, Ch. 183, L. 1999; amd. Sec. 3, Ch. 80, L. 2001; amd. Sec. 4, Ch. 73, L. 2005.

22-1-405. Boards of trustees — authority — resolution of disagreements. (1) The board of trustees of a library federation shall act as an advisor to the participating libraries and their boards of trustees.

(2) Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in 22-1-309.

(3) Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission.

History: En. 44-214.1 by Sec. 5, Ch. 357, L. 1974; R.C.M. 1947, 44-214.1.

22-1-406 through 22-1-410 reserved.

22-1-411. Repealed. Sec. 1, Ch. 355, L. 1981.

History: En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974; R.C.M. 1947, 44-215.

22-1-412. Purpose. It is the purpose of 22-1-413 and this section to establish a program whereby state funds may be appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402.

History: En. 44-304 by Sec. 1, Ch. 416, L. 1975; R.C.M. 1947, 44-304; amd. Sec. 1, Ch. 373, L. 1981; amd. Sec. 119, Ch. 42, L. 1997.

22-1-413. Administration by Montana state library commission. The Montana state library commission must receive and shall administer the appropriation for state funding to public library federations. The commission shall allocate the appropriation among grant programs and shall allocate funds among federations according to formulas for distribution as the commission establishes in rules adopted pursuant to 22-1-103. Federations receiving state funds from the commission shall submit annual plans for the expenditure of state funds and report annually to the commission concerning the progress of the various projects for which state funding was received. The reports must contain an accounting for all state funds received.

History: En. 44-305 by Sec. 2, Ch. 416, L. 1975; R.C.M. 1947, 44-305; amd. Sec. 2, Ch. 373, L. 1981; amd. Sec. 5, Ch. 183, L. 1999; amd. Sec. 4, Ch. 80, L. 2001.

Cross-References

Strict accountability, Art. VIII, sec. 12, Mont. Const.

22-1-414. Repealed. Sec. 3, Ch. 373, L. 1981.

History: En. 44-306 by Sec. 3, Ch. 416, L. 1975; R.C.M. 1947, 44-306.

22-1-415. Repealed. Sec. 3, Ch. 373, L. 1981.

History: En. 44-307 by Sec. 4, Ch. 416, L. 1975; R.C.M. 1947, 44-307.

22-1-416. Repealed. Sec. 3, Ch. 373, L. 1981.

History: En. 44-308 by Sec. 5, Ch. 416, L. 1975; R.C.M. 1947, 44-308.

Part 5
Law Library

Part Cross-References

Distribution of Administrative Rules of Montana to law library, 2-4-313.
Distribution of reports of Supreme Court decisions, 3-2-604.

22-1-501. State law library created. The library formerly known as a department of the state library of Montana and called "the law library" is a separate and distinct library designated the "state law library of the state of Montana". The collections of laws, decisions of courts, law reports, textbooks, legal periodicals, and miscellaneous books and journals together with pamphlets, papers, maps, charts, and manuscripts in the law library or belonging to the law library or acquired by or donated to the law library constitute the law library, and the title to all of the property constituting the law library must be in the state of Montana, subject to the custody and control of the library board established in 22-1-502.

History: **En. Sec. 1, Ch. 153, L. 1949; R.C.M. 1947, 44-401; amd. Sec. 20, Ch. 16, L. 1991.**

22-1-502. Location — control by board of trustees. The state law library of the state of Montana shall be located in Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees consisting of the chief justice and the justices of the supreme court of the state of Montana.

History: **En. Sec. 2, Ch. 153, L. 1949; amd. Sec. 1, Ch. 142, L. 1977; R.C.M. 1947, 44-402; amd. Sec. 1, Ch. 252, L. 1981.**

Cross-References

Supreme Court created, Art. VII, sec. 1 through 3, Mont. Const.

22-1-503. Authority of board. The powers and duties of said board are as follows:

(1) to make rules, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public and the office hours of the library;

(2) to appoint a librarian and prescribe the duties of such librarian when not otherwise provided for by law;

(3) to sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund;

(4) to see that the books and other properties of the library are maintained in good order and repair and are protected from theft or injury;

(5) to draw from the state treasury, at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals, and other works and properties therefor, including complete sets of statutory laws and codified laws of the United States of America, of the several states of the union, and of other jurisdictions, any moneys in the fund and available for such purposes;

(6) to establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States as may be for the benefit and advantage of the state law library and promote the acquisition of books and other works from such sources as may be useful to those resorting to the facilities of the state law library.

History: **En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969; R.C.M. 1947, 44-403; amd. Sec. 8, Ch. 125, L. 1983.**

22-1-504. Duties of librarian — library staff state employees. (1) The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

(2) The members of the staff of the state law library, except the librarian, are employees of the judicial branch of state government, are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130, and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

History: **En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(2); amd. Sec. 25, Ch. 585, L. 2001.**

22-1-505. Use of library. The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislature, the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

History: **En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(1).**

22-1-506. Liability for injury to books or failure to return. A person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by the person is liable to the state in three times the value of the book if the book is not replaced by a new one or another book of identical title, in good order and condition. A statute of limitations may not ever be effective against the claim of the state under this section.

History: **En. Sec. 6, Ch. 153, L. 1949; R.C.M. 1947, 44-406; amd. Sec. 350, Ch. 56, L. 2009.**

Part 6
Interstate Library Compact

22-1-601. Library compact. The Interstate Library Compact is approved, enacted into law, and entered into by the state of Montana. The compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;

(2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;

(3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of that state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the

conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or it as to all matters within the officer's or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which the administrator's state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon the administrator by the laws of that state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967; R.C.M. 1947, 44-601; amd. Sec. 351, Ch. 56, L. 2009.

22-1-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967; R.C.M. 1947, 44-602.

Cross-References

State librarian as executive officer, 22-1-102.

Part 7
Public Library Districts

22-1-701. Public library districts — purpose — territory. (1) The purpose of this part is to provide a method for:

(a) establishing, equipping, administering, and funding public libraries; and

(b) contracting for library services from existing public libraries.

(2) A public library district may contain the entire territory of a county, the territory of part of a county, or territory in more than one county. A public library district may include incorporated municipalities within a county.

(3) The territory included in a public library district must contain a taxable value of at least $5 million.

History: En. Sec. 1, Ch. 92, L. 2001.

22-1-702. Creation or enlargement of public library district. (1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a district.

(2) The petition must contain:

(a) the boundaries of the proposed public library district;

(b) a map showing the boundaries;

(c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(d) the proposed number of members on the board of trustees. The number of members must be five or seven.

(3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.

(4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.

(6) At a hearing on the proposed public library district, the county governing body shall hear testimony:

(a) of all interested persons on whether a district should be created;

(b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and

(c) on any other matter relating to the petition.

(7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:

(a) set the boundaries of the proposed district;

(b) set the maximum mill levy for the proposed district;
(c) set the number of members to be on the board of trustees; and
(d) call for an election on the question of whether to create the district. The election may be:
(i) held in conjunction with a regular or primary election; or
(ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.

History: En. Sec. 2, Ch. 92, L. 2001; amd. Sec. 4, Ch. 203, L. 2005.

22-1-703. Election on creation of district. (1) The election on the question of whether to create a public library district must be conducted in accordance with Title 13, chapter 1, part 5.

(2) Only qualified electors residing within the proposed public library district may vote on the question of whether to create the district.

(3) The question of creating a public library district must be submitted to the electors in substantially the following form:

☐ FOR the creation of a public library district that may levy not more than ... mills of property tax for the operation of the district.

☐ AGAINST the creation of a public library district.

History: En. Sec. 3, Ch. 92, L. 2001; amd. Sec. 233, Ch. 49, L. 2015.

22-1-704. Formation of public library district — appointment of initial board of trustees. (1) If a majority of the votes cast at the election in the territory of each county included in the proposed public library district approve the formation of the district, the governing body of each county shall, within 10 days of the receipt of the official canvass of the result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the public library district, the governing body of each county with territory included in the district shall jointly appoint the initial members of the district's board of trustees. The members shall serve until their successors are elected and qualified.

History: En. Sec. 4, Ch. 92, L. 2001.

22-1-705. Consolidation of existing public libraries and public library districts. (1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the library is included in the district boundaries. The governing body of the city or county that established the public library shall hold a public hearing on the question of whether the territory served by the library should be included in the district. If the governing body determines that the territory served by the public library should be consolidated into the district, it shall adopt a resolution, following the public hearing, to that effect. If the governing body of the city or county that established the public library determines that the territory served by the library should not be included in the district, it shall adopt a resolution to that effect and the boundaries of the district must be adjusted to exclude the territory served by the public library.

(b) Any existing bonded indebtedness against the territory served by the public library or the library district remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of 22-1-706.

History: En. Sec. 5, Ch. 92, L. 2001; amd. Sec. 5, Ch. 203, L. 2005.

22-1-706. Election of board of trustees — compensation — removal — single-member trustee districts. (1) After appointment of the initial members of the board of trustees, all members must be elected by the electors of the public library district.

(2) The election of members to the board of trustees must be held in accordance with Title 13, chapter 1, part 5.

(3) (a) A candidate for the office of trustee of the public library district must be a resident of the district and must file a declaration of candidacy with the office of the election administrator within the time period specified in 13-1-502.

(b) If the district lies in more than one county, the declaration of candidacy must be presented to the election administrator who will be conducting the election pursuant to 13-1-505.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a declaration of candidacy for a position. If a nomination petition is not filed for an office, the county governing body of the county conducting the election shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office.

(5) The term of office of an elected board member begins on the date that the board member is elected. The term of office of an elected member is 4 years, except that a simple majority of the members of the first elected board shall serve a term of 2 years, with the minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the board. The term of the appointed member expires upon the election of a successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held in accordance with Title 13, chapter 1, part 5.

(7) Members of the board of trustees serve without compensation.

(8) A trustee may be removed from office by a court of competent jurisdiction pursuant to state law governing the removal of elected officials. If charges are brought against a trustee and if good cause is shown, the governing body of the county that conducted the election pursuant to 13-1-505 may suspend the trustee until the charges can be heard in a court of competent jurisdiction.

(9) (a) If the trustees determine that it is in the best interest of the electors of the public library district, they shall:

(i) propose the creation of a single-member trustee district plan with districts that are as compact in area and as equal in population as possible;

(ii) schedule and hold a public hearing on the plan; and

(iii) publish a notice of the public hearing as provided in 7-1-2121.

(b) After the public hearing is held, the trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted, the trustees shall publish notice of its adoption as provided in 7-1-2121.

(c) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan, and the election of each member must be submitted to the electors of the trustee district in which the candidate resides.

History: En. Sec. 6, Ch. 92, L. 2001; amd. Sec. 234, Ch. 49, L. 2015.

22-1-707. Duties and powers of board of trustees. (1) The board of trustees of a public library district shall:

(a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;

(b) prepare annual budgets as required by the county governing body or bodies;

(c) pay necessary expenses of district staff members when on business of the district; and

(d) prepare and submit any records required by the Montana state library.

(2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:

(a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or

(ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;

(b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

(c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and may own and hold title to the buildings and facilities and equip, operate, and maintain the buildings and facilities; or

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

(d) adopt by resolution bylaws and rules for the operation and administration of the district;

(e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;

(f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;

(g) accept donations and devises of money or personal property;

(h) establish a library depreciation reserve fund as authorized and described in 22-1-716; and

(i) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.

History: En. Sec. 7, Ch. 92, L. 2001; amd. Sec. 6, Ch. 203, L. 2005.

22-1-708. Public library district budget — property tax levy. (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 40, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate pursuant to 22-1-703 or 22-1-709.

History: En. Sec. 8, Ch. 92, L. 2001; amd. Sec. 235, Ch. 49, L. 2015.

22-1-709. Election to change maximum property tax mill levy. (1) The maximum property tax mill levy authorized for the operation of a public library district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the public library district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the board of trustees.

(3) The petition must set forth the proposed new maximum mill levy for the operation of the district.

(4) On receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or on receipt of a resolution for a change adopted by the board of trustees, the county governing body shall submit to the electorate of the public library district, at an election held in accordance with Title 13, chapter 1, part 5, a ballot question on changing the maximum mill levy. The question must be submitted to the electors of the district in substantially the following form:

☐ FOR changing the authorized maximum property tax mill levy for the operation of the public library district from .... to ....

☐ AGAINST changing the authorized maximum property tax mill levy for the operation of the public library district.

History: En. Sec. 9, Ch. 92, L. 2001; amd. Sec. 236, Ch. 49, L. 2015.

22-1-710. Dissolution of public library district. (1) A public library district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 15% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the board of trustees or the governing body of the county in which territory of the district is located.

(2) On receipt of a petition that has been certified by the county clerk as sufficient under this section or upon adoption of a resolution of intent, the county governing body shall hold a public hearing on the question of dissolving the public library district. Notice of the hearing must be published as provided in 7-1-2121.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the public library district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by the withdrawal of territory, it shall publish notice of the hearing as provided in 7-1-2121. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by the withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the public library district or altering the boundaries of the district by the withdrawal of land from the district. The county governing body shall schedule and conduct the election in accordance with Title 13, chapter 1, part 5.

(5) The question of withdrawal of territory under this section must be voted on separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the public library district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.

History: En. Sec. 10, Ch. 92, L. 2001; amd. Sec. 237, Ch. 49, L. 2015.

22-1-711. Effect of dissolution. (1) If dissolution of a public library district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of the filing of the order; or

(b) certification by the board of trustees that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligation of the public library district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy a property tax in an amount not to exceed the amount authorized for the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district.

(b) If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations.

(3) Any asset of the public library district remaining after all debts and obligations have been discharged becomes the property of the county in which the asset is located.

History: En. Sec. 11, Ch. 92, L. 2001.

22-1-712. Multijurisdictional public library districts — administration. A multijurisdictional public library district created under the provisions of Title 7, chapter 11, part 10, must be administered according to the provisions of 22-1-305 through 22-1-317.

History: En. Sec. 21, Ch. 286, L. 2009.

22-1-713 through 22-1-715 reserved.

22-1-716. Library depreciation reserve fund. (1) The trustees of a public library district may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve district library services.

(2) Money for the library depreciation reserve fund is those funds that have been allocated for district library services in any year but which have not been expended by the end of the year. The money includes but is not limited to county appropriations, federal reserve sharing funds, and public and private grants.

(3) The money held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: **En. Secs. 7, 8, 9, Ch. 203, L. 2005.**

Parts 8 through 10 reserved

Part 11
Library Records Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

22-1-1101. Short title. This part may be cited as the "Montana Library Records Confidentiality Act".

History: **En. Sec. 1, Ch. 476, L. 1985.**

22-1-1102. Definitions. As used in 22-1-1103, the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

History: **En. Sec. 2, Ch. 476, L. 1985.**

22-1-1103. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

History: **En. Sec. 3, Ch. 476, L. 1985.**

Cross-References

Persons entitled to examine and copy public records, 2-6-1003.
Public records management, Title 2, ch. 6, parts 10 and 11.

22-1-1104 through 22-1-1110 reserved.

22-1-1111. Penalty. Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

History: **En. Sec. 6, Ch. 476, L. 1985.**

Cross-References

Costs of actions, Title 25, ch. 10.

CHAPTER 2
ARTS

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22-2-602. Advisory committee — composition — duties.

Part 7 — Traditional Arts and Crafts

22-2-701. Traditional arts and crafts account — funding — use.

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Art galleries' tax exemption, 15-6-201.
State art galleries to be operated by State Historical Society, 22-3-101.

Part 1
Montana Arts Council

Part Cross-References

Agencies allocated to State Board of Education, 2-15-1511.

22-2-101. Montana arts council established. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967; R.C.M. 1947, 82-3601.

22-2-102. Membership of council — appointment. The Montana arts council consists of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest.

History: En. Sec. 2, Ch. 2, L. 1967; R.C.M. 1947, 82-3602; amd. Sec. 1, Ch. 385, L. 1989.

22-2-103. Council membership — tenure — compensation. The term of office of each member is 5 years. The governor shall designate a presiding officer and a vice presiding officer from the members of the council to serve in those capacities at the pleasure of the governor. Each vacancy must be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council must be compensated and receive travel expenses as provided for in 2-15-124.

History: En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975; R.C.M. 1947, 82-3603; amd. Sec. 2, Ch. 385, L. 1989; amd. Sec. 352, Ch. 56, L. 2009; amd. Sec. 1, Ch. 725, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 725, L. 2025. Amendment effective May 13, 2025.

22-2-104. Executive committee. The council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967; R.C.M. 1947, 82-3604.

22-2-105. Administrative officers and employees — compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974; R.C.M. 1947, 82-3605.

22-2-106. Council duties. The council shall:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation in the arts;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) as required under 2-15-242, nominate three individuals to serve as the state poet laureate and provide the list of nominees to the governor.

History: En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969; R.C.M. 1947, 82-3606; amd. Sec. 9, Ch. 125, L. 1983; amd. Sec. 2, Ch. 115, L. 2005.

22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Money received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national endowment for the arts.

History: **En. Sec. 7, Ch. 2, L. 1967; amd. Sec. 11, Ch. 3, L. 1977; R.C.M. 1947, 82-3607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 48, Ch. 2, L. 2009.**

22-2-108. Authorization for council to enter certain contracts. The council may contract with individuals, organizations, and institutions for services or cooperative endeavors furthering the objectives of the council's programs.

History: **En. Sec. 8, Ch. 2, L. 1967; R.C.M. 1947, 82-3608.**

22-2-109. Financing of council. The council may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the state special revenue fund of the state treasury and may not be used for any purposes other than the improvement, development, and operation and programs of the council.

History: **En. Sec. 9, Ch. 2, L. 1967; R.C.M. 1947, 82-3609; amd. Sec. 1, Ch. 277, L. 1983.**

Part 2
Montana Folklife Project
(Expired)

22-2-201. Expired. Sec. 1, Ch. 473, L. 1981.

History: **En. Sec. 1, Ch. 531, L. 1979.**

22-2-202. Expired. Sec. 1, Ch. 473, L. 1981.

History: **En. Sec. 2, Ch. 531, L. 1979.**

22-2-203. Expired. Sec. 1, Ch. 473, L. 1981.

History: **En. Sec. 3, Ch. 531, L. 1979.**

22-2-204. Expired. Sec. 1, Ch. 473, L. 1981.

History: **En. Sec. 4, Ch. 531, L. 1979.**

22-2-205. Expired. Sec. 1, Ch. 473, L. 1981.

History: **En. Sec. 5, Ch. 531, L. 1979.**

Part 3
Cultural and Aesthetic Projects

22-2-301. Cultural and aesthetic projects grants. (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana arts council, by August 1 of the year preceding the convening of a regular legislative session.

(2) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

History: **En. Sec. 2, Ch. 653, L. 1979; amd. Sec. 1, Ch. 99, L. 1983; Sec. 22-3-112, MCA 1981; redes. 22-2-301 by Code Commissioner, 1983; amd. Sec. 1, Ch. 587, L. 1991.**

22-2-302. Advisory committee — powers and duties. (1) Subject to 22-2-310, the cultural and aesthetic projects advisory committee provided for in 2-15-1521 shall review all proposals for cultural and aesthetic project grants before they are submitted to the legislature.

(2) Consistent with the rules adopted in accordance with 22-2-303, the committee shall make recommendations to the legislature on each proposal submitted to the committee.

(3) The committee's recommendations to the legislature are advisory only.

(4) The committee shall present its recommendations to the appropriations committee of the legislature by the 15th day of any regular legislative session.

History: **En. Sec. 3, Ch. 99, L. 1983; amd. Sec. 3, Ch. 718, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 718, L. 2025. Amendment effective October 1, 2025.

22-2-303. Rulemaking authority. (1) The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.

(2) The Montana arts council shall adopt rules that implement the provisions of 22-2-306, 22-2-308, and 22-2-309, relating to local support, matching requirements, application procedures, and disbursements of grants.

History: En. Sec. 5, Ch. 99, L. 1983; amd. Sec. 4, Ch. 732, L. 1985.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

22-2-304. Cultural and aesthetic project appropriations — administration. (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108 for cultural and aesthetic projects before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

(4) Grant proposals approved by the legislature are administered by the Montana arts council.

History: En. Sec. 4, Ch. 99, L. 1983; amd. Sec. 1, Ch. 13, L. 1985; amd. Sec. 5, Ch. 626, L. 1989; amd. Sec. 2, Ch. 8, Sp. L. January 1992.

22-2-305. Allocation and disbursement of funds. (1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.

(2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds in accordance with the provisions of the appropriation act.

History: En. Sec. 2, Ch. 688, L. 1983; amd. Sec. 1, Ch. 315, L. 1987.

22-2-306. Grant conditions — additional funds — accounts and reports. (1) A grant may not be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, as defined in 1-1-201, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within the limitations contained in this subsection, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. A modification may not increase the grant award or change the scope or purpose of the award.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and other financial and descriptive reports that the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council. With regard to grantees who in the past have submitted late reports, 30% of the grant award may be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant.

History: En. Sec. 1, Ch. 688, L. 1983; amd. Sec. 3, Ch. 732, L. 1985; amd. Sec. 2, Ch. 315, L. 1987; amd. Sec. 1, Ch. 656, L. 1989; amd. Sec. 12, Ch. 685, L. 2023.

Cross-References

Nondiscrimination by state, 49-2-308.

22-2-307. Renumbered 22-2-321. Code Commissioner, 1985.

22-2-308. Application procedure — grant criteria. (1) A grant for a facility owned and operated by a county or municipality must require financial support for the facility from the county or municipality. A grant for a facility owned by a county or municipality but operated by a nonprofit organization is expected to have financial support from the county or municipality, but must have, at a minimum, in-kind support for the facility from the county or municipality. The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project and the facility.

(2) An applicant for a historic preservation project shall cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released.

History: En. Sec. 1, Ch. 732, L. 1985; amd. Sec. 2, Ch. 587, L. 1991; amd. Sec. 1, Ch. 479, L. 1993.

22-2-309. Grant categories. (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

(b) operational support for cultural institutions that have been in existence for at least 2 years and whose budgets reflect only the cost of continuing their current program;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

(2) The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent $1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.

(3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least $3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(4) Challenge grants require a match of at least $3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. Not less than one-third of the specified match must be in cash. Not more

than one-third of the match may be in wills, devises, bequests, and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor.

History: **En. Sec. 2, Ch. 732, L. 1985; amd. Sec. 3, Ch. 315, L. 1987; amd. Sec. 2, Ch. 656, L. 1989.**

22-2-310. Prioritization of cultural and aesthetic projects grant awards — criteria. After the cultural and aesthetic projects advisory committee provided for in 2-15-1521 has reviewed the applications to ensure compliance and determine whether the application meets the committee's criteria for funding, the committee shall rank the projects by two criteria as follows:

(1) the status of an applicant's previous grant awards, for which:

(a) first priority will be given to qualified applicants who have not previously received an award;

(b) second priority will be given to applicants who have received one grant award in the previous three funding cycles;

(c) third priority will be given to applicants who have received two grant awards in the previous three funding cycles; and

(d) fourth priority will be given to applicants who have received three grant awards in the previous three funding cycles; and

(2) the size of an applicant's annual operating budget, for which:

(a) first priority will be given to applicants whose total annual operating budget is less than $99,999;

(b) second priority will be given to applicants whose total annual operating budget ranges between $100,000 and $249,999;

(c) third priority will be given to applicants whose total annual operating budget ranges between $250,000 and $499,999; and

(d) fourth priority will be given to applicants whose total annual operating budget is equal to or greater than $500,000.

(3) Between each funding cycle, the committee, in consultation with the budget director, shall increase the budget limits established in subsection (2) to account for inflation.

History: **En. Sec. 1, Ch. 718, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

22-2-311. Acquisition of federal system for award management number. Grant applicants for a cultural or aesthetic project whose total program budget does not exceed $100,000 and who do not receive or use federal funds to operate may request a waiver from the committee for the requirement to obtain a federal system for award management number, or SAMs number, if complying with the requirement would be burdensome. The committee may not unreasonably withhold the waiver.

History: **En. Sec. 2, Ch. 718, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

22-2-312 through 22-2-320 reserved.

22-2-321. Reversion of granted funds. At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

History: **En. Sec. 3, Ch. 688, L. 1983; Sec. 22-2-307, MCA 1983; redes. 22-2-321 by Code Commissioner, 1985.**

Part 4
Art for State Buildings

22-2-401. Short title. This part may be cited as the "Percent-for-Art Act".

History: **En. Sec. 1, Ch. 552, L. 1983.**

22-2-402. Purpose. The state of Montana, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and provides opportunity for artists and other skilled workers to practice their crafts, declares that a portion of the funds for the construction or renovation of appropriate state buildings be allocated for the acquisition of works of art for such buildings.

History: En. Sec. 2, Ch. 552, L. 1983.

22-2-403. Definitions. As used in this part, the following definitions apply:

(1) (a) "Artist" means a practitioner in the visual arts generally recognized by the practitioner's peers or critics as a professional who produces works of art.

(b) The term does not include the project architect, or any member of the architect's firm, of a new state building that is to have works of art under the provisions of this part.

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) (a) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media).

(b) The term does not include environmental landscaping.

History: En. Sec. 3, Ch. 552, L. 1983; amd. Sec. 353, Ch. 56, L. 2009.

22-2-404. Art for new state buildings — finance. (1) Subject to legislative allocations as provided in subsection (2), all capital project appropriations by the legislature shall include, as a part of the appropriation, an amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition of works of art for new state buildings, maintenance of works of art, and administration of this part as provided in subsection (3).

(2) (a) If a state building recommended for construction in the report required by Title 17, chapter 7, part 2, is also recommended as appropriate for the inclusion of works of art as provided in 22-2-403(2), the report shall so state, and in addition the report shall include any recommendation made by the Montana arts council concerning the appropriateness of the building for the inclusion of works of art, the types of works of art suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art. The Montana arts council may submit a recommendation even if the architecture and engineering division of the department of administration has determined that a structure is not appropriate for inclusion of works of art.

(b) The legislature may, for those buildings recommended as appropriate for the inclusion of works of art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in subsection (1).

(c) Additional funds, including separate appropriations, donations, grants, and other available governmental funds, may be used for the acquisition of works of art for new state buildings.

(3) (a) One percent of the funds received from the maximum appropriation setoff allocated by the legislature must be granted to the Montana arts council for the maintenance of art in state buildings.

(b) The administration of this part may be funded out of the appropriation setoff allocated by the legislature.

History: En. Sec. 4, Ch. 552, L. 1983.

22-2-405. Display of works of art. The works of art acquired under the provisions of this part may be an integral part of or attached to the new state building or may be displayed on the parcel of land on which the new state building is located. The works of art must be so located that they are in public view.

History: En. Sec. 5, Ch. 552, L. 1983.

22-2-406. Administration — selection of works of art. (1) The Montana arts council is primarily responsible for the administration of this part. The council shall:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art;

(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee consists of the project architect or the architect's designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select, commission the artist for, review the design, execution, and placement of, and finally accept all works of art. The Montana arts council shall consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of this part are displayed in a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404 or any other funds available for maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) A payment may not be made to any artist for works of art under this part without prior authorization of the Montana arts council.

History: En. Sec. 6, Ch. 552, L. 1983; amd. Sec. 354, Ch. 56, L. 2009.

22-2-407. State ownership of work of art. The state must obtain sole ownership of each work of art acquired for display under this part, including all tangible rights and privileges, subject to the artist's right to claim authorship of the work of art.

History: En. Sec. 7, Ch. 552, L. 1983.

22-2-408. Part not exclusive. The provisions of this part are not the exclusive manner of acquiring and displaying works of art in public buildings.

History: En. Sec. 8, Ch. 552, L. 1983.

Part 5
Sale of Fine Art by Art Dealer

Part Cross-References

Consignment sales by commission merchants, Title 30, ch. 11, part 4.
Rights of artists in products of the mind, 30-13-131, 30-13-133 through 30-13-135.
Beneficiaries, Title 72, ch. 38.
Trustees, Title 72, ch. 38, part 8.

22-2-501. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, signed limited edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

(5) "Person" means an individual, partnership, corporation, association, or other group, however organized.

History: En. Sec. 1, Ch. 534, L. 1985.

22-2-502. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition and sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

History: **En. Sec. 2, Ch. 534, L. 1985.**

22-2-503. Agency relationship — trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

History: **En. Sec. 3, Ch. 534, L. 1985.**

Cross-References

Law of agency, Title 28, ch. 10.
Consignment sales by commission merchants, Title 30, ch. 11, part 4.
Ownership of art as product of the mind, 30-13-131.
Beneficiaries, Title 72, ch. 38.
Trustees, Title 72, ch. 38, part 8.

22-2-504. Subsequent sale — payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

History: **En. Sec. 4, Ch. 534, L. 1985.**

22-2-505. Waiver void — exemption from U.C.C. (1) Any provision of a contract or agreement by which the consignor waives any provision of this part is void.

(2) This part is not subject to the provisions of Title 30, chapters 1 through 9A.

History: **En. Sec. 5, Ch. 534, L. 1985.**

Part 6
American Indian Monument and Tribal Flags

22-2-601. American Indian monument and tribal flags. The state of Montana shall erect on the grounds of the capitol complex, in recognition of American Indians' contributions to this state and nation, either or both of the following:

(1) a monument, including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans, in consultation with the advisory committee established in 22-2-602;

(2) the flags of the tribes in Montana as authorized by the governor.

History: **En. Sec. 1, Ch. 755, L. 1991; amd. Sec. 1, Ch. 569, L. 2003; amd. Sec. 1, Ch. 281, L. 2019.**

22-2-602. Advisory committee — composition — duties. (1) To coordinate the project provided for in 22-2-601(1), the governor shall appoint an advisory committee composed of the following 12 members:

(a) a representative from the Montana arts council;

(b) a representative from each of the federally recognized Indian tribes in Montana;

(c) a representative from the architecture and engineering division of the department of administration;

(d) the state director of Indian affairs or the state director's designee; and

(e) a representative of the Montana historical society.

(2) The advisory committee shall make recommendations to the department of administration for an appropriate design and site for the monument on the grounds of the capitol complex. The monument may be located separately from the tribal flags authorized in 22-2-601(2).

(3) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument on the grounds of the capitol complex.

History: En. Sec. 2, Ch. 755, L. 1991; amd. Sec. 6, Ch. 164, L. 2009; amd. Sec. 2, Ch. 281, L. 2019; amd. Sec. 5, Ch. 240, L. 2021.

Part 7
Traditional Arts and Crafts

22-2-701. Traditional arts and crafts account — funding — use. (1) There is an account in the state special revenue fund established in 17-2-102 for the purchase and sale of traditional arts and crafts by American Indian master artists. Money may be deposited in the account through an allocation of money to the account or as provided in this section.

(2) Money in the account may be used only by the Montana arts council to purchase traditional arts and crafts by American Indian master artists and to make the arts and crafts available for resale. Money generated through the sale of traditional arts and crafts must be deposited into the account.

History: En. Sec. 1, Ch. 289, L. 2007.

CHAPTER 3
ANTIQUITIES

Part 1 — Historical Society

22-3-101. Historical society.
22-3-102. Definitions.
22-3-103. Historical library — independence from other libraries, museums, or galleries.
22-3-104. Appointment and qualifications of board of trustees.
22-3-105. Compensation and expenses of trustees.
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22-3-108. Function of director — employment of assistants.
22-3-109. Official seal.
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22-3-111. Financing of society.
22-3-112. Renumbered 22-2-301.
22-3-113. Acquisitions trust.
22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue.
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Chapter Cross-References

Acquisition of land for museums — indebtedness, 7-16-2105, 7-16-4104.
Authorization to establish cultural facilities, 7-16-4103.
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Part 1
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Distribution of Session Laws, 5-11-203.
Authorization to levy tax for cultural facilities, 7-16-4105.

22-3-101. Historical society. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana entitled "An Act to Incorporate the Historical Society of Montana", approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "An Act Concerning the Historical Society for the State of Montana and Making an Appropriation Therefor" and by "An Act to Perpetuate the Historical Society of the State of Montana", approved March 1, 1949, is hereby continued and perpetuated as the Montana historical society and as such constitutes an agency of state government for the use, learning, culture, and enjoyment of the citizens of the state and for the acquisition, preservation, and protection of historical records, art, archival, and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments.

History: En. Sec. 1, Ch. 47, L. 1963; R.C.M. 1947, 44-516.

22-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the executive committee of the board of trustees of the Montana historical society.

(2) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular and generally of the region.

(3) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records.

(4) "Society" means the Montana historical society and includes:

(a) the historical library and its contents;

(b) any museums and art galleries and their contents acquired by the trustees;

(c) any historical places, sites, or monuments acquired or developed by the society;

(d) any divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees.

(5) "Trustees" means the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963; amd. Sec. 5, Ch. 3, L. 1977; amd. Sec. 1, Ch. 366, L. 1977; R.C.M. 1947, 44-517.

22-3-103. Historical library — independence from other libraries, museums, or galleries. (1) There is a historical library, to be maintained and operated by the Montana historical society.

(2) The historical library and any historical museum administered by the society in accordance with the provisions of this part shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana.

History: (1)En. 44-515.1 by Sec. 4, Ch. 3, L. 1977; Sec. 44-515.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 47, L. 1963; amd. Sec. 6, Ch. 3, L. 1977; Sec. 44-518, R.C.M. 1947; R.C.M. 1947, 44-515.1, 44-518.

22-3-104. Appointment and qualifications of board of trustees. (1) The government and administration of the society are vested in a board of 15 trustees appointed by the governor, by and with the consent of the senate. Three each of the original members of the board shall be appointed for 1-, 2-, 3-, 4-, and 5-year terms. An appointment to replace a member whose term has expired shall be for 5 years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

(2) Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest. The governor, insofar as possible, shall appoint trustees from the various geographical areas of the state.

(3) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archaeologist.

(4) The governor shall appoint these professionals to the board of trustees as vacancies occur.

History: (1)En. Sec. 4, Ch. 47, L. 1963; Sec. 44-519, R.C.M. 1947; (2) thru (4)En. Sec. 5, Ch. 47, L. 1963; amd. Sec. 7, Ch. 3, L. 1977; amd. Sec. 1, Ch. 520, L. 1977; Sec. 44-520, R.C.M. 1947; R.C.M. 1947, 44-519, 44-520.

Cross-References

Boards and offices associated with State Historical Society, 2-15-1512.

22-3-105. Compensation and expenses of trustees. Each member of the board of trustees shall be compensated and receive travel expenses as provided for in 2-15-124.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(3); amd. Sec. 1, Ch. 3, L. 1979; amd. Sec. 8, Ch. 650, L. 1985.

22-3-106. Executive committee. The trustees may select an executive committee of five trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963; R.C.M. 1947, 44-521.

22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix the director's salary, and prescribe the director's duties and responsibilities;

(4) to create classes of memberships in the society as they consider desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects, or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from the sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report must include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Money received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display, when appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials that exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana, with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate the objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211.

History: **En. Sec. 8, Ch. 47, L. 1963; amd. Sec. 1, Ch. 204, L. 1975; amd. Sec. 2, Ch. 366, L. 1977; R.C.M. 1947, 44-523; amd. Sec. 1, Ch. 419, L. 1983; amd. Sec. 29, Ch. 112, L. 1991; amd. Sec. 3, Ch. 4, L. 1993; amd. Sec. 1, Ch. 148, L. 2005.**

22-3-108. Function of director — employment of assistants. The director is fully responsible for the immediate direction, management, and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: **En. Sec. 9, Ch. 47, L. 1963; R.C.M. 1947, 44-524.**

22-3-109. Official seal. The design of the official seal of the society shall be substantially as follows: a central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background, and directly beneath it the figures "1865". The seal shall be 2 inches in diameter and surrounded by the words, "Montana Historical Society Seal".

History: **En. Sec. 10, Ch. 47, L. 1963; R.C.M. 1947, 44-525.**

22-3-110. Decor of quarters. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished, and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: **En. Sec. 11, Ch. 47, L. 1963; R.C.M. 1947, 44-526.**

22-3-111. Financing of society. The society may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions, and royalties on the display and sale of arts and crafts. All profits, revenues, royalties, or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development, and operation of the society.

History: **En. Sec. 12, Ch. 47, L. 1963; R.C.M. 1947, 44-527.**

Cross-References

Authority for use of certain magazine subscription fees for current publication, 17-8-107.

22-3-112. Renumbered 22-2-301. Code Commissioner, 1983.

22-3-113. Acquisitions trust. There is an account in the governmental fund category permanent fund type to be known as the Montana historical society acquisitions trust, to be used exclusively for the acquisition of items or collections as provided in 22-3-114.

History: **En. Sec. 1, Ch. 4, L. 1993; amd. Sec. 17, Ch. 34, L. 2001.**

22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue. (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent fund subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Revenue earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust.

History: En. Sec. 2, Ch. 4, L. 1993; amd. Sec. 18, Ch. 34, L. 2001; amd. Sec. 2, Ch. 148, L. 2005.

22-3-115. Montana historical interpretation state special revenue account. (1) There is a Montana historical interpretation state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the Montana historical interpretation state special revenue account money allocated from the lodging facility use tax proceeds allocated by 15-65-121.

(3) Money in the account is available to the Montana historical society by appropriation and must be used to pay costs associated with historical interpretation and the Robert Scriver collection.

History: En. Sec. 1, Ch. 358, L. 2011.

22-3-116. Montana historical society membership special revenue account — use — statutory appropriation. (1) There is a Montana historical society membership account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account money received from the purchases of memberships to the Montana historical society.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society and may not be used for any purposes other than the improvement, development, and operation of the society.

History: En. Sec. 1, Ch. 423, L. 2015.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 235, L. 2025, repealed sec. 6, Ch. 423, L. 2015, which terminated this section June 30, 2025. Effective May 1, 2025.

22-3-117. Montana original governor's mansion special revenue account — use — statutory appropriation. (1) There is a Montana original governor's mansion account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account money allocated from tours of the mansion.

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society and may not be used for any purposes other than the improvement, development, and operation of the Montana original governor's mansion.

History: En. Sec. 2, Ch. 423, L. 2015.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 235, L. 2025, repealed sec. 6, Ch. 423, L. 2015, which terminated this section June 30, 2025. Effective May 1, 2025.

22-3-118 and 22-3-119 reserved.

22-3-120. *(Temporary)* **Montana 250th commission.** (1) There is a Montana 250th commission formed to promote civic engagement and increase public awareness of United States and Montana government and history, including the history of tribal nations, leading up to the United States semiquincentennial. The commission is allocated to the Montana historical society for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of the following 11 members:

(a) the Montana historical society director or the director's designee;

(b) two members of the legislature, one from the minority party and one from the majority party appointed as follows:

(i) first, a member of the senate appointed by the president of the senate; and

(ii) second, a member of the house of representatives appointed by the speaker of the house of representatives;

(c) a high school social studies teacher who teaches a course in United States government appointed by the superintendent of public instruction;

(d) a college-level United States history or political science professor appointed by the commissioner of higher education;

(e) a tribal representative appointed by the state director of Indian affairs; and

(f) five members appointed by the governor representing various civic, veteran, military, tourism, history, museum, library, arts, or local and tribal government organizations.

(3) The commission shall:

(a) work with partners, including but not limited to educational institutions, historical preservation entities, civic engagement organizations, tourism, arts, and heritage entities, veteran and military organizations, and local, state, national, and tribal partners;

(b) collaborate with the board of public education, office of public instruction, local schools, and commission partners to:

(i) increase participation in the United States civics test as referenced in 20-7-119;

(ii) increase youth proficiency in United States and Montana government and history and in the distinct and unique heritage of American Indians pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5; and

(iii) recognize schools for outstanding achievement in subsections (3)(b)(i) and (3)(b)(ii);

(c) plan, coordinate, and implement an overall program to build public awareness of and foster public participation in celebrating and commemorating the 250th anniversary of the independence and founding of the United States;

(d) draw attention to the achievements, honors, innovations, and significance of the people in this state and recommend ways for this state to commemorate the 250th anniversary of the independence and founding of the United States;

(e) recognize the vibrant indigenous cultures living in this place in 1776;

(f) emphasize the service and sacrifices of veterans who have secured and preserved American independence and freedom; and

(g) celebrate and commemorate events and activities throughout this state.

(4) The commission may and is expected to seek gifts, donations, grants, and other sources of funding to support its activities.

(5) Commission members may not receive compensation but are entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) The education interim committee established in 5-5-224 shall include monitoring of the commission and the commission's efforts in its duties for the 2023 and 2024 interim and may request updates and reports from the commission. *(Terminates December 31, 2026—sec. 6, Ch. 599, L. 2023.)*

History: En. Sec. 1, Ch. 599, L. 2023.

Part 2
Preservation of Records

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state and to local governments should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state and local government affairs, the state and local governments should preserve noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969; R.C.M. 1947, 82-3207; amd. Sec. 16, Ch. 420, L. 1993.

22-3-202. Archives created — appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and local governments and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define the archivist's duties, and fix the archivist's compensation with the approval of the board of trustees of the Montana historical society.

History: **En. Sec. 2, Ch. 108, L. 1969; R.C.M. 1947, 82-3208; amd. Sec. 17, Ch. 420, L. 1993.**

22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value to the state and is responsible for the ultimate preservation of local government records of permanent value. Upon request, the archivist shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government and in local governments, with due regard to the functions of the officers and agencies involved.

History: **En. Sec. 3, Ch. 108, L. 1969; amd. Sec. 1, Ch. 41, L. 1973; R.C.M. 1947, 82-3209; amd. Sec. 18, Ch. 420, L. 1993.**

Cross-References

Secretary of State records preservation, 2-6-1013, 2-6-1101.

Authority of Board of Trustees of State Historical Society, 22-3-107.

22-3-204 through 22-3-210 reserved.

22-3-211. Historic records network — creation — purpose. (1) The trustees of the Montana historical society shall establish and coordinate the administration of a historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

History: **En. 44-523.1 by Sec. 3, Ch. 366, L. 1977; R.C.M. 1947, 44-523.1.**

Cross-References

Authority of Board of Trustees of State Historical Society, 22-3-107.

22-3-212. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

History: **En. 44-523.2 by Sec. 4, Ch. 366, L. 1977; R.C.M. 1947, 44-523.2.**

22-3-213 through 22-3-220 reserved.

22-3-221. Storing and safekeeping of war records. The board of trustees of the Montana historical society is hereby authorized and directed to set apart a suitable room in the buildings under their jurisdiction for the storing and safekeeping of such archives, records, etc., of the grand army of the republic and the united Spanish war veterans, and said room shall be suitably furnished, and the librarian for the Montana historical society shall be custodian of said archives, records, etc.

History: **En. Sec. 1, Ch. 32, L. 1913; amd. Sec. 2, Ch. 97, L. 1915; re-en. Sec. 321, R.C.M. 1921; amd. Sec. 1, Ch. 96, L. 1927; re-en. Sec. 321, R.C.M. 1935; amd. Sec. 3, Ch. 93, L. 1953; R.C.M. 1947, 82-2502.**

Cross-References

Duties of Department of Military Affairs, 10-1-102.

Part 3

Veterans' and Pioneers' Memorial Building

22-3-301. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

History: **En. 78-201.1 by Sec. 8, Ch. 3, L. 1977; R.C.M. 1947, 78-201.1.**

22-3-302. Use of building. The veterans' and pioneers' memorial building shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the united Spanish war veterans of Montana, the veterans of foreign wars of Montana, the American legion of Montana, the disabled American veterans of Montana, the World War I veterans of Montana, the Montana historical society, the society of Montana pioneers, and the sons and daughters of Montana pioneers and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations and for the librarian and other employees of the Montana historical society.

History: **En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963; R.C.M. 1947, 78-202.**

22-3-303. Gifts for building. The state of Montana is hereby authorized to receive gifts, legacies, and donations of money or other property for the erection or maintenance of the memorial building herein provided for, and all such gifts, legacies, and donations are hereby dedicated to such purpose.

History: En. Sec. 9, Ch. 204, L. 1945; R.C.M. 1947, 78-209.

Part 4
Antiquities

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-401. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 1, Ch. 502, L. 1973; R.C.M. 1947, 81-2501.

22-3-402. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 2, Ch. 502, L. 1973; R.C.M. 1947, 81-2502.

22-3-403. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 3, Ch. 502, L. 1973; amd. Sec. 1, Ch. 440, L. 1977; R.C.M. 1947, 81-2503.

22-3-404. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 4, Ch. 502, L. 1973; amd. Sec. 2, Ch. 440, L. 1977; R.C.M. 1947, 81-2504.

22-3-405. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 5, Ch. 502, L. 1973; amd. Sec. 3, Ch. 440, L. 1977; R.C.M. 1947, 81-2505.

22-3-406. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 6, Ch. 502, L. 1973; amd. Sec. 4, Ch. 440, L. 1977; R.C.M. 1947, 81-2506.

22-3-407. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 7, Ch. 502, L. 1973; amd. Sec. 5, Ch. 440, L. 1977; R.C.M. 1947, 81-2507.

22-3-408. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 8, Ch. 502, L. 1973; amd. Sec. 9, Ch. 3, L. 1977; amd. Sec. 6, Ch. 440, L. 1977; R.C.M. 1947, 81-2508.

22-3-409. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 9, Ch. 502, L. 1973; amd. Sec. 7, Ch. 440, L. 1977; R.C.M. 1947, 81-2509.

22-3-410. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 10, Ch. 502, L. 1973; amd. Sec. 10, Ch. 3, L. 1977; amd. Sec. 8, Ch. 440, L. 1977; R.C.M. 1947, 81-2510.

22-3-411. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 11, Ch. 502, L. 1973; amd. Sec. 9, Ch. 440, L. 1977; R.C.M. 1947, 81-2511.

22-3-412. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 12, Ch. 502, L. 1973; amd. Sec. 10, Ch. 440, L. 1977; R.C.M. 1947, 81-2512.

22-3-413. Repealed. Sec. 16, Ch. 563, L. 1979.

History: En. Sec. 13, Ch. 502, L. 1973; amd. Sec. 11, Ch. 440, L. 1977; R.C.M. 1947, 81-2513.

22-3-414 through 22-3-420 reserved.

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affected property owner" means a person or entity whose real property will be physically affected by the activity of an applicant or whose real property is proposed for incorporation into a historic district proposed as eligible for listing in the National Register of Historic Places.

(2) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in 22-3-432.

(3) "Applicant" means a person who applies to a governmental entity, including a federal, state, or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

(4) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(5) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(6) "Historic preservation officer" means the officer provided for in 2-15-1512.

(7) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(8) "Preservation review board" means the board provided for in 2-15-1512.

(9) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(10) "Registered property" means any heritage property listed in the register.

(11) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979; amd. Sec. 1, Ch. 323, L. 1987; amd. Sec. 2, Ch. 343, L. 1995.

22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year;

(5) act in an advisory capacity to the historic preservation office and to state agencies; and

(6) accept reports from state agencies and the Montana university system on the first Tuesday in February of every even-numbered year on the status and stewardship of the agencies' and the university system's heritage properties as required in 22-3-424 and make recommendations regarding management of the properties.

History: En. Sec. 5, Ch. 563, L. 1979; amd. Sec. 1, Ch. 187, L. 2011.

22-3-423. Duties of historic preservation officer. Subject to the supervision of the director of the historical society, the historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter the properties;

(10) respond to requests for consultation under section 106 of the National Historic Preservation Act, as provided for in 22-3-429;

(11) develop procedures and guidelines for the evaluation of heritage property or paleontological remains as provided in 22-3-428;

(12) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located;

(13) report the information gathered pursuant to 22-3-422(6), along with any recommendations by the historic preservation officer or the review board, to the education interim committee in accordance with 5-11-210. The report required in this subsection must also be incorporated into the biennial report required to be submitted to the governor and the legislature under 22-3-107(8).

(14) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.

History: En. Sec. 6, Ch. 563, L. 1979; amd. Sec. 1, Ch. 351, L. 1983; amd. Sec. 2, Ch. 323, L. 1987; amd. Sec. 3, Ch. 343, L. 1995; amd. Sec. 2, Ch. 187, L. 2011; amd. Sec. 60, Ch. 261, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Use of heritage properties for state agency new space needs, 2-17-107.
Land preservation, 23-1-106 through 23-1-108.
State planning on historical sites, 90-1-102.

22-3-424. Duties of state agencies. State agencies, including the Montana university system, shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains; and

(4) pursuant to 22-3-422(6), provide to the preservation review board on the first Tuesday in February of every even-numbered year the following information:

(a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;

(b) the status and condition of each heritage property;

(c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and the cost of those activities;

(d) a prioritized list of the maintenance needs for the properties; and

(e) a record of the agencies' compliance with subsections (1) and (2).

History: En. Sec. 9, Ch. 563, L. 1979; amd. Sec. 2, Ch. 351, L. 1983; amd. Sec. 3, Ch. 187, L. 2011.

Cross-References

Land preservation, 23-1-106, 23-1-107.
State planning on historical sites, 90-1-102.

22-3-425 through 22-3-427 reserved.

22-3-428. Heritage property — procedures and guidelines required. The historic preservation officer shall adopt standardized procedures and guidelines for inventorying, collecting data on, documenting, and evaluating all types of heritage property. In adopting the standardized procedures and guidelines, the historic preservation officer may consult with state and federal agencies experienced in reviewing and mitigating environmental and cultural impacts caused by development of properties.

History: En. Sec. 4, Ch. 343, L. 1995.

22-3-429. Requests for consultation — public notice — appeal of findings. (1) A federal or state entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit, license, lease, or funding may request the views of the historic preservation officer concerning:

(a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

(b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are found to be eligible for register listing; and

(c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

(2) A request for comment pursuant to 16 U.S.C. 470f may be made simultaneously with a request pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30 calendar days of receiving the request and shall address each property in the request and each topic of the request. In the event that an agency requests simultaneous consultation for two or more criteria under this section, the agency and historic preservation officer may extend the 30-day review period by mutual agreement. If the historic preservation officer fails to comment within that time, that failure is construed as concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking, the historic preservation officer may not change a finding for a heritage property at a later date.

(3) If the proposed finding is that a heritage property or paleontological remains are involved and that a proposed activity will have an adverse impact on the property or remains, the proposed finding must address all properties or remains involved and describe the characteristics that illustrate the qualities that make the property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a property or remains may be eligible but additional information or study is needed to reach an eligibility finding, the finding must specify the type and amount of information required in accordance with standards and guidelines as provided in 22-3-428.

(4) At the time that the state or federal agency requests the views of the historic preservation officer as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and other interested persons of the request for consultation and shall identify locations where the submitted materials may be reviewed.

(5) The applicant and any affected property owners have 20 days in which to appeal the historic preservation officer's finding to the director. The appeal notice must include a written statement of reasons for the appeal and any additional supporting information.

(6) The director of the historical society shall issue a final finding within 30 days of the expiration of the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or regulatory or administrative process.

(7) If the applicant or an affected property owner is not satisfied with the finding of the director of the historical society concerning the eligibility of the property or remains for listing in the register or a finding of adverse effect to the property, the entity or property owner may appeal the finding to the district court in a county in which affected property is located. Appeal may be taken by filing a petition with the district court citing the decision by the director of the historical society and the evidence upon which the director relied. On appeal, the district court may consider any documents supporting or not supporting the finding, the written comments received by the director of the historical society, and any additional evidence that may be submitted to the court. The district court may substitute its judgment for the judgment of the director of the historical society as to the weight of the evidence.

(8) A state agency may not require a historical or archaeological survey as a condition of applying for or receiving a state or local permit, license, lease, or funding for a project to reconstruct or maintain an irrigation ditch or appurtenant structures or equipment when the ditch or appurtenant structures or equipment are in use or have been in use within the past 10 years, if the reconstruction or maintenance will occur within the existing ditch easement and if the project is not on land owned by the state.

History: **En. Sec. 5, Ch. 343, L. 1995; amd. Sec. 120, Ch. 42, L. 1997; amd. Sec. 1, Ch. 148, L. 2017; amd. Sec. 8, Ch. 535, L. 2021.**

22-3-430. Avoidance and mitigation of impacts. (1) Avoidance of impacts to heritage property or paleontological remains is preferred. Avoidance may not be construed to constitute neglect of the property or anticipatory demolition.

(2) If it is not feasible to avoid impacts to heritage property or paleontological remains, a mitigation plan must be developed by the agency, in consultation with the applicant, to minimize

adverse effects to the property or remains. Mitigation must be directed at the characteristics of the property that make it eligible for listing in the register. If requested by the agency, the historic preservation officer shall identify suggested mitigation actions in writing at the time that the historic preservation officer submits a proposed finding under 22-3-429.

History: **En. Sec. 6, Ch. 343, L. 1995.**

22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for consideration the necessary forms to nominate heritage properties to the register.

(2) (a) For private properties, the historic preservation officer shall notify the owner of the property and allow the owner a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.

(b) The historic preservation officer and the preservation review board may review the nomination of property that was not nominated because of owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.

(c) The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.

(3) For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it must be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted.

History: **En. Sec. 7, Ch. 563, L. 1979; amd. Sec. 1, Ch. 199, L. 1983; amd. Sec. 3, Ch. 323, L. 1987; amd. Sec. 355, Ch. 56, L. 2009.**

Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-432. Antiquities permits. (1) A person may not excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided a permit may not be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of the investigations, containing relevant maps, documents, drawings, and photographs, must be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other approved institutions within the state or may be loaned to qualified institutions outside the state. These procedures must consider the needs of approved in-state museums or institutions that are most proximate to excavation. For fossils that do not meet scientific criteria as significant, approval may not be unreasonably withheld.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

History: **En. Sec. 8, Ch. 563, L. 1979; amd. Sec. 356, Ch. 56, L. 2009; amd. Sec. 1, Ch. 297, L. 2023.**

22-3-433. Environmental review process. (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action. However, where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

History: **En. Sec. 10, Ch. 563, L. 1979.**

Cross-References

MEPA — environmental impact statements, Title 75, ch. 1, part 2.

22-3-434. Denial of applications. State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated; provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in 22-3-433.

History: **En. Sec. 11, Ch. 563, L. 1979.**

22-3-435. Report of discovered heritage properties or paleontological remains. Any person conducting activities, including survey, excavation, or construction, who discovers on any lands owned by the state any heritage property or paleontological remains as defined in 22-3-421 or who finds that an operation licensed or otherwise entitled by the state may damage heritage properties or paleontological remains on any lands owned by the state shall promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains.

History: **En. Sec. 12, Ch. 563, L. 1979.**

Cross-References

State planning on historical sites, 90-1-102.

22-3-436 through 22-3-440 reserved.

22-3-441. Restrictions on reproduction or sale of heritage property and paleontological remains. (1) No person may reproduce or falsely identify any heritage property or paleontological remains with the intent to sell the property or remains as an original.

(2) No person may sell any heritage property or paleontological remains with the knowledge that the property or remains have previously been collected or excavated in violation of this section, 22-3-432, or 22-3-435.

History: **En. Sec. 13, Ch. 563, L. 1979.**

22-3-442. Criminal penalty. A person violating any provision of 22-3-432, 22-3-435, or 22-3-441 is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation of any provision of 22-3-432, 22-3-435, or 22-3-441 constitutes a distinct and separate offense.

History: En. Sec. 14, Ch. 563, L. 1979.

Part 5
Museum Loan Act

Part Cross-References

County museums, Title 7, ch. 16, part 21.
Municipal museums, 7-16-4103, 7-16-4105.
Donations of predatory animal hides and specimens, 81-7-105, 81-7-120.

22-3-501. Short title. This part may be cited as the "Museum Loan Act".

History: En. Sec. 1, Ch. 630, L. 1985.

22-3-502. Purpose. The people of Montana have an interest in preserving and protecting objects of scientific, historic, artistic, or cultural value and making them accessible to the public. The purpose of this part is to serve this interest by establishing a uniform procedure for lenders to preserve their interests in property loaned to museums; to require lenders to notify museums of changes of address and transfers of ownership of loaned property; and to vest title to unclaimed property in the museum that holds it.

History: En. Sec. 2, Ch. 630, L. 1985.

22-3-503. Definitions. As used in this part, the following definitions apply:

(1) "Loan" means a deposit of property not accompanied by a transfer of title to the property.

(2) "Museum" means an institution located in Montana and operated by a nonprofit corporation or a public agency primarily for educational, scientific, or aesthetic purposes, and that owns, borrows, or cares for and exhibits, studies, or catalogs property.

(3) "Property" includes any tangible object, animate or inanimate, that has intrinsic historic, artistic, scientific, or cultural value.

History: En. Sec. 3, Ch. 630, L. 1985.

22-3-504. Loans for an indefinite term. (1) If a museum accepts a loan of property for an indefinite term or for a term longer than 7 years, the museum must inform the lender in writing at the time of the loan of the provisions of this part.

(2) For the purposes of this part, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum after the specified term expires.

History: En. Sec. 4, Ch. 630, L. 1985.

22-3-505. Manner of giving notice to lender. When the provisions of this part require a museum to give notice to a lender, the museum is considered to have given notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days from the date the notice was mailed. If the museum does not have a current address for the lender or if proof of receipt is not received by the museum, notice is considered given if the museum publishes it at least once a week for 3 consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's most recent address as shown on the museum's records.

History: En. Sec. 5, Ch. 630, L. 1985.

22-3-506. Notice of intent to preserve interest. (1) The owner of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property. This notice must be in writing and must contain a description of the property adequate to enable the museum to identify the property.

(2) The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim that would be extinguished under the terms of a written loan agreement or that would otherwise be invalid or unenforceable.

(3) (a) Unless the loaned property is returned to the claimant, the museum shall retain for not less than 25 years the original or an accurate copy of any notice filed by a claimant under this section.

(b) The fact that the museum retains a notice may not be construed to mean that the notice is sufficient or accurate or that it is effective to preserve an interest in property on loan to the museum.

(4) A notice of intent to preserve an interest in property on loan to a museum satisfies the requirements of subsection (1) if it is in substantially the following form and contains the information and attachments described:

NOTICE TO PRESERVE AN INTEREST IN PROPERTY
ON LOAN TO A MUSEUM

Name of Museum .... Date..................
Claimant's Name..
Address ....
(street address; city; state; zip code)
Telephone ....
Date Property Loaned..
Description of Property..

Documentation of ownership — check the appropriate box:

☐ Legible copy of original loan receipt attached

☐ Other documentation attached

If you are not the original lender, describe the origin of your interest in the property and attach a copy of any document that creates your interest:

I understand that I must promptly notify the museum in writing of any change of address or change in ownership of the loaned property.

I declare under penalty of false swearing that to the best of my knowledge the information contained in this notice is true.

SIGNED..
(claimant)

OR I declare under penalty of false swearing that I am authorized to act on behalf of the claimant and am informed and believe that the information contained in this notice is true.

SIGNED..
(claimant's representative)

History: **En. Sec. 6, Ch. 630, L. 1985.**

22-3-507. Notice of change of address or transfer of ownership. The owner of property on loan to a museum shall notify the museum in writing of any change of address or change in ownership of the property.

History: **En. Sec. 7, Ch. 630, L. 1985.**

22-3-508. Conservation or disposal of loaned property. (1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's permission if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan has become a hazard to the health and safety of the public or the museum staff and:

(a) the museum is unable to reach the lender at the lender's last address of record; or

(b) the lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures to or disposes of property under the provisions of this section, the museum:

(a) has a lien on the property and on the proceeds of any disposition thereof for the costs incurred by the museum; and

(b) is not liable for injury to or loss of the property if it:

(i) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(ii) exercised reasonable care in the choice and application of conservation measures.

History: **En. Sec. 8, Ch. 630, L. 1985.**

22-3-509. Notice of injury or loss. (1) A museum shall give a lender prompt notice of any known injury to or loss of property on loan.

(2) A notice of injury or loss must contain the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

(3) If the museum is unable to give the lender the notice required by this section by mail, the museum shall publish the notice as provided in 22-3-505 and in addition shall include a statement containing substantially the following information:

The records of ....
(name of museum)

indicate that you have property on loan to it. Your failure to notify it in writing of a change of address or ownership may result in the loss of rights in the loaned property. See 22-3-507, MCA.

History: **En. Sec. 9, Ch. 630, L. 1985.**

22-3-510. Notice of intent to terminate loan. A museum may give the lender notice of its intent to terminate a loan made for an indefinite term or for a term longer than 7 years. A notice of intent to terminate a loan must include the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan. In addition, it must include a statement containing substantially the following information:

The records of ....
(name of museum)

indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so, you will be considered to have donated the property to the institution. See 22-3-504, MCA.

History: **En. Sec. 10, Ch. 630, L. 1985.**

22-3-511 through 22-3-520 reserved.

22-3-521. Limitation on action against the museum. (1) No action may be brought against a museum for damages because of injury to or loss of property loaned to the museum more than 3 years from the date the museum gives the lender notice of the injury or loss or 10 years from the date of the injury or loss, whichever occurs earlier.

(2) No action may be brought against a museum to recover property on loan if more than 3 years have passed from the date the museum gave the lender notice of its intent to terminate the loan as provided in 22-3-510.

(3) No action may be brought against a museum to recover property on loan if more than 25 years have passed from the date of the last written contact between the lender and the museum, as evidenced in the museum's records.

(4) A lender is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in subsections (1) through (3).

(5) A person who purchases property from a museum acquires good title to the property if the museum has acquired title to the property pursuant to subsection (4).

(6) Notwithstanding subsections (3) and (4), a lender who was not given notice that the museum intended to terminate a loan and who proves that the museum received a notice of intent to preserve an interest in loaned property within the 25 years immediately preceding the

filing of an action to recover the property may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at 10% a year.

History: **En. Sec. 11, Ch. 630, L. 1985.**

22-3-522. Uniform Unclaimed Property Act superseded. The provisions of this part supersede the provisions of Title 70, chapter 9, except that at its option, a museum may report property that has been on loan unclaimed by its owner for more than 5 years to the department of revenue for disposition as provided in Title 70, chapter 9.

History: **En. Sec. 12, Ch. 630, L. 1985; amd. Sec. 21, Ch. 16, L. 1991.**

22-3-523. Applicability. This part applies only to property loaned to a museum on or after October 1, 1985, or to existing loaned property with a market value of $1,000 or less at the time of disposal.

History: **En. Sec. 14, Ch. 630, L. 1985.**

Part 6
Local Management of Historic Properties

Part Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.
Tax-exempt property — categories, 15-6-201.
Antiquities, Title 22, ch. 3, part 4.
Nonprofit corporations, Title 35, ch. 2.

22-3-601. Short title. This part may be cited as the "Local Management of Historic Sites and Buildings Act".

History: **En. Sec. 1, Ch. 261, L. 1989.**

22-3-602. Purpose. The purposes of this part are to:

(1) encourage the restoration, preservation, and maintenance of historic sites and buildings owned by the state of Montana;

(2) encourage the participation of Montana citizens and groups in the local management, on a nonprofit basis, of historic sites and buildings through the donation of time, materials, and resources toward the restoration and preservation of these properties;

(3) remove unnecessary barriers to the efficient and cost-effective management of historic sites and buildings by qualified and responsible local nonprofit corporations as contracted managers; and

(4) retain state ownership of historic sites and buildings and state control over decisions concerning their historic integrity and preservation so that the citizens of the state may realize the greatest benefits available from each property.

History: **En. Sec. 2, Ch. 261, L. 1989.**

22-3-603. Management of historic sites and buildings — contracts. (1) The Montana historical society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on behalf of the contracting local nonprofit corporation. The nonprofit corporation shall conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) A contract may not be entered into or any other obligation incurred for the purposes in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection (2) to deposit in a local financial institution all profits, revenue, royalties,

or fees received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and reviewed biennially by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property. The Montana historical society or its designee may conduct an audit of the funds when determined necessary by the society.

History: En. Sec. 3, Ch. 261, L. 1989; amd. Sec. 121, Ch. 42, L. 1997; amd. Sec. 1, Ch. 10, L. 2005.

Part 7
Law Enforcement Officers' Memorial

22-3-701. Creation of law enforcement officers' memorial. The memorial in the Montana law enforcement museum, located in the old Montana state prison, Deer Lodge, Montana, which is dedicated to the individuals who have served their communities and the state of Montana as law enforcement officers and have been killed or died in the line of duty, is designated as this state's official law enforcement officers' memorial.

History: En. Sec. 1, Ch. 45, L. 1991; amd. Sec. 357, Ch. 56, L. 2009.

Part 8
Human Skeletal Remains and Burial Site Protection

Part Cross-References

Repatriation of human remains and funerary objects, Title 22, ch. 3, part 9.

22-3-801. Short title. This part may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

History: En. Sec. 1, Ch. 748, L. 1991.

22-3-802. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, this part is the exclusive law governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

History: En. Sec. 2, Ch. 748, L. 1991.

22-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the burial preservation board established in 22-3-804.

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

History: En. Sec. 3, Ch. 748, L. 1991.

22-3-804. Board — composition — rights — responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the federally recognized Indian tribes in Montana, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(c) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological society;

(d) one physical anthropologist appointed by the governor;

(e) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(f) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 4-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial material;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

(4) The board is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(5) Each member of the board is entitled to be paid $100 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 748, L. 1991; amd. Sec. 54, Ch. 483, L. 2001; amd. Sec. 1, Ch. 99, L. 2015; amd. Sec. 6, Ch. 240, L. 2021; amd. Sec. 1, Ch. 106, L. 2023; amd. Sec. 2, Ch. 330, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 330, L. 2025. Amendment effective July 1, 2025.

22-3-805. Discovery — reporting requirements — field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in 22-3-808.

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make a determination within 2 working days from the time the person responsible for the excavation notifies the coroner of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, the coroner shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make a determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, the coroner shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct,

with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or the landowner's representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity that can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

History: En. Sec. 5, Ch. 748, L. 1991; amd. Sec. 358, Ch. 56, L. 2009.

Cross-References

Investigative procedures, Title 46, ch. 4.

22-3-806. Scientific analysis — permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in 22-3-804; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or the officer's designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of this part or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

History: **En. Sec. 6, Ch. 748, L. 1991; amd. Sec. 359, Ch. 56, L. 2009.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

22-3-807. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer this part.

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

History: **En. Sec. 7, Ch. 748, L. 1991.**

Cross-References

Montana Criminal Justice Information Act of 1979, Title 44, ch. 5.

22-3-808. Prohibited acts — penalties. (1) After July 1, 1991, unless authorized under this part or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under 22-3-805, a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of this part; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed $1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed $20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed $50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed $500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed $10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by 22-3-805(1) may be fined an amount not less than $100 or more than $500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under 22-3-806 is subject to a civil penalty not to exceed $2,000 for the first violation and not to exceed $10,000 for a subsequent violation.

History: **En. Sec. 8, Ch. 748, L. 1991.**

22-3-809. Civil penalty and damages actions. (1) This part does not preclude civil actions for damages.

(2) The board may bring an action under 22-3-808 for a civil penalty.

History: **En. Sec. 9, Ch. 748, L. 1991.**

22-3-810. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

History: **En. Sec. 10, Ch. 748, L. 1991.**

Cross-References

Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Criminal penalty for conducting closed meeting — official misconduct, 45-7-401.

22-3-811. Disposition of fees, grants, and donations. There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under 22-3-804 into the account to be used to pay the board's expenses.

History: En. Sec. 13, Ch. 748, L. 1991; amd. Sec. 2, Ch. 99, L. 2015.

Part 9
Repatriation of Human Remains and Funerary Objects

Part Cross-References

Human skeletal remains and burial site protection, Title 22, ch. 3, part 8.

22-3-901. Short title. This part may be cited as the "Montana Repatriation Act".

History: En. Sec. 1, Ch. 558, L. 2001.

22-3-902. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) since July 1, 1991, and passage of the Human Skeletal Remains and Burial Site Protection Act, Montana law has provided a mechanism to protect marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds discovered on state and private land from pilferage, disturbance, and destruction in an effort to provide equal protection and respect for all burial sites, human skeletal remains, and funerary objects;

(b) despite the state's success in balancing the interests of those persons who have tribal, kinship, cultural, or religious affiliation with a burial site with the interests of scientists, agencies, law enforcement, and private landowners, the 1991 Human Skeletal Remains and Burial Site Protection Act did not provide a mechanism to repatriate culturally affiliated human skeletal remains or funerary objects that were taken from burial sites prior to July 1, 1991;

(c) funerary objects interred with culturally affiliated human skeletal remains are not abandoned when interred. Discoverers, therefore, have no right of ownership, and they cannot confer a right of ownership to another because the person who interred funerary objects with the deceased did not through interment abandon a property interest in the objects, but intended for those objects to remain with the deceased.

(d) the state of Montana has an obligation to avoid infringing upon the right to religious beliefs and practices guaranteed to all citizens under the free exercise clause of the first amendment of the United States constitution and under Article II, section 4, of the Montana constitution and to preserve the cultural integrity of American Indian citizens recognized by the state under Article X, section 1(2), of the Montana constitution;

(e) the state of Montana acknowledges the paramount privacy right of a tribal group, lineal descendant, next of kin, agency, or museum to protect sensitive and sacred information that may be required to be disclosed to demonstrate cultural affiliation or lineal descent and therefore authorizes the protection of that information to the full extent allowed by the Montana constitution; and

(f) the state of Montana acknowledges the right of an agency, museum, or person to maintain possession or control of human skeletal remains or funerary objects that are currently under scientific study or that require testing prior to the effective date of the board's determination regarding repatriation.

(2) It is the intent of the legislature to:

(a) provide a consistent state policy to ensure that all human skeletal remains and all funerary objects interred with those human skeletal remains be treated with dignity and respect;

(b) encourage voluntary disclosure and repatriation of culturally affiliated human skeletal remains and funerary objects by an agency, museum, or person;

(c) provide a mechanism to provide for repatriation of human skeletal remains and funerary objects to a tribal group, lineal descendant, or next of kin establishing cultural affiliation with those human skeletal remains or funerary objects that were taken from unprotected burial sites prior to July 1, 1991, and that are currently in the possession or control of an agency, museum, or person in this state; and

(d) protect the right of privacy guaranteed to tribal groups, lineal descendants, next of kin, agencies, or museums regarding the disclosure of sacred or religious information to the full extent allowed by the Montana constitution.

History: **En. Sec. 2, Ch. 558, L. 2001.**

22-3-903. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any department, bureau, commission, board, council, or political subdivision of the state of Montana, except an entity that is a cemetery board or has authority over a cemetery.

(2) "Board" means the burial preservation board established in 22-3-804.

(3) "Burial site" has the meaning provided in 22-3-803.

(4) "Claimant" means a claimant for repatriation under 22-3-912 and includes a tribal group, lineal descendant, or next of kin.

(5) "Control" means having a legal interest in human skeletal remains or funerary objects sufficient to lawfully permit an agency or museum to treat the object as part of its collection for purposes of this part whether or not the human skeletal remains or funerary objects are in the physical custody of the agency or museum.

(6) "Cultural affiliation" means the existence of a shared group identity that can reasonably be traced historically or anthropologically between a tribal group and an identifiable earlier tribe. It may also include a shared identity that can reasonably be traced historically between an individual and an identifiable individual lineal descendant or next of kin.

(7) "Funerary objects" means objects that, as part of a death rite or ceremony, are reasonably believed to have been placed with human skeletal remains at a specific burial site either at the time of death or later and which human skeletal remains are currently in the possession or control of an agency, museum, or person, either along with the human skeletal remains or that can be identified by a preponderance of the evidence to be related to specific known human skeletal remains not currently in the possession or control of the agency, museum, or person.

(8) "Human skeletal remains" has the meaning provided in 22-3-803.

(9) "Inventory" means an itemized list that summarizes the collection of human skeletal remains and funerary objects in the possession or control of an agency or museum.

(10) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" has the meaning provided in 22-3-803.

(11) "Museum" means an entity or state or local government agency, including an educational institution, that receives state funding.

(12) "Person" includes a corporation, partnership, joint venture, estate, and any other legal entity, as well as a natural person.

(13) "Possessing entity" means an agency, museum, or person from whom repatriation is requested.

(14) (a) "Possession" means having physical custody of human skeletal remains or funerary objects with a sufficient legal interest to lawfully treat the human skeletal remains or funerary objects as part of a collection.

(b) The term does not include human skeletal remains or funerary objects on loan to an agency or museum.

(15) "Right of possession" means:

(a) possession obtained of nonculturally affiliated human skeletal remains or funerary objects; or

(b) possession obtained with the voluntary consent of a group or individual that had authority of alienation over the human skeletal remains or funerary object.

(16) "Tribal group" has the meaning provided in 22-3-803.

History: **En. Sec. 3, Ch. 558, L. 2001.**

22-3-904. Rules. The board shall adopt rules necessary to provide for filing of claims, procedures for hearings authorized under this part, and procedures for resolving multiple claims. Hearings may not occur until rules have been adopted. Rules must address, at a minimum, criteria for determining lineal descent, cultural affiliation, standards of evidence, and standards of proof.

History: En. Sec. 12, Ch. 558, L. 2001.

22-3-905 through 22-3-910 reserved.

22-3-911. Agency and museum inventory of human skeletal remains and funerary objects. (1) An agency or museum that on or after May 2, 2001, has possession or control over human skeletal remains or funerary objects shall within 6 months complete an inventory of all human skeletal remains and funerary objects and, to the extent possible based on all information possessed by the agency or museum:

(a) identify the circumstances surrounding the acquisition of the human skeletal remains or funerary objects, including any geographical information available pertaining to the original location of the human skeletal remains or funerary objects;

(b) list in the inventory the human skeletal remains or funerary objects that are clearly identifiable as to cultural affiliation; and

(c) list the human skeletal remains or funerary objects that are not clearly identifiable as to cultural affiliation.

(2) Within 3 months of completing the inventory, the agency or museum shall provide a copy of the inventory to:

(a) the board;

(b) the state historic preservation office; and

(c) each tribal government located in Montana.

(3) The agency, museum, board, or state historic preservation office shall provide a copy of an inventory list or a portion of a list to any other requesting party only after the agency, museum, board, or office, pursuant to Article II, section 9, of the Montana constitution, has balanced the public's right to the information and the individual privacy interest associated with the information and has determined that the right of individual privacy does not clearly exceed the merits of public disclosure.

(4) Following completion of the initial inventory, each agency or museum shall, whenever the agency or museum receives new human skeletal remains or funerary objects through a loan or donation, update its inventory list within 6 months of the loan or donation. Upon completion, the agency or museum shall provide a copy of this update to the entities listed in subsection (2) within 3 months.

History: En. Sec. 4, Ch. 558, L. 2001.

22-3-912. Claims for repatriation. (1) A claim for repatriation of human skeletal remains or funerary objects must be made by:

(a) filing a written claim for the human skeletal remains or funerary objects with the board and the possessing entity having possession or control of the human skeletal remains or funerary objects; and

(b) proving, by a preponderance of the evidence:

(i) the claimant's cultural affiliation to the human skeletal remains or funerary objects; and

(ii) that the possessing entity does not have the right of possession.

(2) A claim for repatriation under this section may be made by a claimant:

(a) who claims cultural affiliation and requests the return of human skeletal remains or funerary objects listed in the inventory of an agency or museum; or

(b) who requests the repatriation of human skeletal remains or funerary objects that are not listed in the inventory of an agency or museum but are in the possession or control of the possessing entity.

History: En. Sec. 5, Ch. 558, L. 2001.

22-3-913. Hearing — hearings examiner — evidence — study or testing order and costs — findings. (1) The board shall appoint an attorney licensed to practice law in Montana as a hearings examiner to hold a hearing pursuant to Title 2, chapter 4, part 6, on a claim filed under 22-3-912. At a hearing under this section, the hearings examiner shall hear the evidence presented by each party, including evidence presented by a possessing entity or intervenor in support of a request for a temporary delay in repatriation made under 22-3-915.

(2) Either party or an intervenor may request and is responsible for the cost of genetic or other study or testing necessary to determine cultural affiliation. Upon such a request, the hearings examiner may order any study or testing necessary and may require a surety bond to ensure protection of human skeletal remains or funerary objects. The hearings examiner may grant the study or testing requested along with sufficient time to conduct the study or testing or may deny any study or testing requested upon a finding that the study or testing would not likely be pertinent to the determination of cultural affiliation.

(3) (a) If, based on a preponderance of the evidence, the hearings examiner finds that the claimant has a cultural affiliation with the human skeletal remains or funerary objects and that the possessing entity does not have the right of possession, the hearings examiner shall recommend to the board that the board order repatriation under 22-3-916. If the hearings examiner finds that there is a need to temporarily delay repatriation based on an ongoing scientific study or a good faith effort toward scientific study under 22-3-915, the hearings examiner shall recommend a delay as provided in 22-3-915.

(b) If, based on a preponderance of the evidence, the hearings examiner finds that the claimant has not proven that the claimant has a cultural affiliation with the human skeletal remains or funerary objects and that the possessing entity has the right of possession, the hearings examiner shall recommend to the board that the board deny the claimant's request for repatriation and shall recommend that the board order that the possessing entity be granted uncontested control and possession of the human skeletal remains or funerary objects under 22-3-916.

(c) A recommendation under this subsection (3) shall be made in the form of a proposal for decision as provided in 2-4-621. The provisions of 2-4-621 apply to a recommendation made under this subsection (3).

(4) If the hearings examiner recommends repatriation, the hearings examiner shall issue an order requiring the possessing entity to consult with the claimant to arrange for the expeditious repatriation of the culturally affiliated human skeletal remains or funerary objects to the claimant, upon order of the board under 22-3-916.

History: **En. Sec. 6, Ch. 558, L. 2001.**

22-3-914. Closure of hearings. To the extent allowed by Montana law, the board shall, upon the request of either party or an intervenor, close any part of a board hearing or any part of a hearing under 22-3-913 to the public if the board finds that information required at the hearing may include identification of the specific location of a burial site that may lead to compromise of a burial site, human skeletal remains, or funerary objects or that information necessary for a determination regarding repatriation may compromise or interfere with any religious practice or custom.

History: **En. Sec. 11, Ch. 558, L. 2001.**

22-3-915. Delay of repatriation for scientific study. (1) If repatriation is ordered after a hearing, a possessing entity may request a temporary delay in repatriation because of:

(a) scientific study being conducted on or proposed to be conducted on human skeletal remains or funerary objects in its possession or control; or

(b) good faith efforts to initiate or proceed with a scientific study of human skeletal remains or funerary objects in its possession or control.

(2) If a hearings examiner determines that a possessing entity has provided evidence supporting a good faith effort regarding scientific study, the hearings examiner shall provide a reasonable period of delay to allow completion of the study prior to repatriation.

History: **En. Sec. 7, Ch. 558, L. 2001.**

22-3-916. Board decision — order — immunity against aggrieved parties — relinquishment of control by tribal group. (1) Subject to the provisions of 2-4-621 and 2-4-623, at the conclusion of the hearing and upon receipt of the recommendations of the hearings examiner, the board shall:

(a) issue findings of facts and conclusions related to any decision regarding its determination supporting or denying a claimant's written request for the repatriation of human skeletal remains or funerary objects;

(b) issue findings of facts and conclusions related to any decision regarding a possessing entity's or intervenor's request for a temporary delay in repatriation pending completion of ongoing scientific study; and

(c) provide the claimant, respondent, possessing entity, or intervenor with a written copy of its findings and conclusions regarding the specific repatriation request.

(2) A possessing entity that repatriates culturally affiliated human skeletal remains or funerary objects in good faith pursuant to this section is not liable for claims by an aggrieved party or for claims of breach of a fiduciary duty or the public trust or of violation of state law that are inconsistent with this part.

(3) This section does not prevent the governing body of a tribal group from expressly relinquishing control over any human skeletal remains or control or title to any funerary object. The acquisition of a funerary object from a tribal group or individual with the voluntary consent of the tribal group or individual with authority to alienate the object constitutes the right of possession over that object. Divestiture of culturally affiliated human skeletal remains or funerary objects from a person without a right of possession does not constitute an unconstitutional taking of property.

History: En. Sec. 8, Ch. 558, L. 2001.

22-3-917. Appeals — stay of order pending appeal — court costs and attorney fees. (1) Within 30 days of a board decision regarding human skeletal remains or a funerary object located within the jurisdiction of the state, either party may file an appeal in the district court in the county in which the subject of the dispute is located. The court may include a grant of attorney fees to the prevailing party when it would serve the interests of justice. The court shall grant an award of costs to the prevailing party. An appeal under this section is subject to the provisions of Title 2, chapter 4, part 7.

(2) The filing of an appeal by either party automatically stays a board order on repatriation of human skeletal remains or funerary objects.

(3) A protection order issued by the board remains in effect until the issue is finally resolved by a state court.

History: En. Sec. 9, Ch. 558, L. 2001.

22-3-918. Multiple claims — care and handling of human skeletal remains or funerary objects pending disposition. If multiple requests for repatriation of human skeletal remains or funerary objects occur and the appropriate claimant cannot be determined, the board shall provide for the appropriate care and handling of the human skeletal remains or funerary objects until:

(1) the requesting parties agree upon the disposition;

(2) the dispute is resolved by the board pursuant to 22-3-916; or

(3) the issue is finally resolved in a state court of competent jurisdiction.

History: En. Sec. 10, Ch. 558, L. 2001.

22-3-919 and 22-3-920 reserved.

22-3-921. Exclusions. The provisions of this part do not apply to any lithic material or other artifacts of nonhuman derivation removed from the Anzick site (known as Montana historical site No. 24PA506) on or before July 1, 1991, regardless of where the material or artifacts are located or by whom the material or artifacts are controlled or possessed.

History: En. Sec. 13, Ch. 558, L. 2001.

Part 10
Heritage Preservation and Development

22-3-1001. Purpose. The purpose of this part is to manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, and are genuinely representative of the state's culture and history. The Montana heritage preservation and development commission shall achieve this purpose by managing the properties for which it is responsible in a manner that protects the properties and encourages economic stability.

History: **En. Sec. 15, Ch. 469, L. 1997; amd. Sec. 1, Ch. 308, L. 2001; amd. Sec. 1, Ch. 78, L. 2015.**

22-3-1002. Montana heritage preservation and development commission. (1) There is a Montana heritage preservation and development commission. The commission is attached to the department of commerce for administrative purposes only, pursuant to 2-15-121. The indirect administrative rate determined by the commission and the department must be reported to the economic affairs interim committee in accordance with 5-11-210.

(2) (a) The commission consists of 14 members. The members must broadly represent the state. Nine members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house.

(b) If the president of the senate and the speaker of the house do not appoint the members for which they are responsible within 2 months of a vacancy having occurred in those positions, the members must be appointed by the governor.

(c) The director of the Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members.

(d) When appointing a member under subsection (2)(a), the governor, the president of the senate, and the speaker of the house shall prioritize selection based on whether the member:

(i) has experience in managing facilities that cater to the needs of tourists;
(ii) has experience in community planning;
(iii) has experience in historic preservation;
(iv) has broad experience in business;
(v) is a member of the tourism advisory council established in 2-15-1816;
(vi) is a Montana historian; or
(vii) is from the public at large.

(3) Except for the initial appointments, members appointed by the governor under subsection (2)(a) shall serve 3-year terms. Members appointed by the president of the senate and the speaker of the house or by the governor under subsection (2)(b) shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) In compliance with the state pay plan, the department shall provide all staff and services to the commission that the commission, in conjunction with the department, determines are necessary for carrying out the commission's programs and statutory requirements. The department shall assess the commission for reasonable costs.

History: **En. Sec. 13, Ch. 469, L. 1997; amd. Sec. 2, Ch. 308, L. 2001; amd. Sec. 1, Ch. 485, L. 2003; amd. Sec. 2, Ch. 78, L. 2015; amd. Sec. 61, Ch. 261, L. 2021; amd. Sec. 1, Ch. 766, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 766, L. 2025. Amendment effective July 1, 2025.

22-3-1003. Powers of commission — contracts — rules. (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the operation of properties in a manner that results in economic stability.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) The contract term limit specified in subsection (1)(a) does not apply to a commercial lease with private organizations that invest substantial capital in property managed by the commission. The contract term limit pursuant to this subsection (2) may be for a period not to exceed 99 years.

(3) (a) Except as provided in subsection (3)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of $300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks. Funding for these projects must pass through directly to the commission.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds $300,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(4) (a) Subject to subsection (4)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) The commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

(5) The commission may solicit funds from other sources, including the federal government, for the management and operation of properties.

(6) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(7) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(8) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.

(9) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become economically stable;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

(i) other matters that the commission considers necessary or appropriate.

(10) Except as provided in subsection (12), the proceeds of any sale under subsection (9) must be placed in the account established in 22-3-1004.

(11) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(12) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission.

(13) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets.

History: **En. Sec. 16, Ch. 469, L. 1997; amd. Sec. 3, Ch. 308, L. 2001; amd. Sec. 1, Ch. 542, L. 2003; amd. Sec. 2, Ch. 403, L. 2007; amd. Sec. 3, Ch. 78, L. 2015; amd. Sec. 1, Ch. 707, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 707, L. 2025. Amendment effective May 13, 2025.

22-3-1004. *(Temporary)* **Montana heritage preservation and development account.** (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

(a) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(b) restoring and maintaining historically significant properties in Montana that are in need of preservation.

(3) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the commission. *(Terminates June 30, 2027—sec. 12, Ch. 563, L. 2021.)*

22-3-1004. *(Effective July 1, 2027)* **Montana heritage preservation and development account.** (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

(a) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(b) restoring and maintaining historically significant properties in Montana that are in need of preservation.

(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the commission to be used as provided in this section.

(4) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the commission.

History: **En. Sec. 17, Ch. 469, L. 1997; amd. Sec. 4, Ch. 308, L. 2001; amd. Sec. 2, Ch. 542, L. 2003; amd. Sec. 4, Ch. 78, L. 2015; amd. Sec. 6, Ch. 563, L. 2021.**

Cross-References

Distribution of tax proceeds — general fund loan authority, 15-65-121.

Part 11
Historic Sites

22-3-1101. Tower Rock — historic site. (1) A 136-acre site that encompasses Tower Rock, a geologic structure listed in the national register of historic places on March 18, 2002, may not be sold or transferred to a nonstate entity and must remain intact as the property of the state of Montana to recognize the national and local historic significance of the Lewis and Clark expedition, whose members named the rock formation, according to notations in the July 16 and 17, 1805, journals of Meriwether Lewis.

(2) The department of transportation may transfer the land to another state agency, and the provisions of 60-4-201 through 60-4-203 and 60-4-211 do not apply. In any transfer of the site, the department of transportation may retain access rights where the site abuts interstate 15.

History: **En. Sec. 1, Ch. 77, L. 2003; amd. Sec. 3, Ch. 17, L. 2025.**

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 17, L. 2025. Amendment effective October 1, 2025.

Part 12
Montana Centennial Farm and Ranch Program

22-3-1201. Purpose. The purpose of this part is to recognize and celebrate the agricultural traditions of the state by identifying those places that represent the perseverance and stewardship of Montana families on their farms and ranches. The Montana centennial farm and ranch program accomplishes this purpose by acknowledging the strength and determination of these families and their efforts to preserve their agricultural traditions, through issuance of a certificate designating a qualified property as a centennial farm or ranch.

History: En. Sec. 1, Ch. 399, L. 2009.

22-3-1202. Montana centennial farm and ranch program. (1) There is a Montana centennial farm and ranch program to recognize Montana farm and ranch families that have owned or lived on their land for 100 years or more.

(2) A Montana farm or ranch family may apply for a centennial farm or ranch designation and a certificate through the program if the family:

(a) has owned or lived on the farm or ranch for 100 years or more;

(b) submits an application to the Montana historical society; and

(c) pays the fee set by the historical society to cover the application process and the certificate.

History: En. Sec. 2, Ch. 399, L. 2009.

22-3-1203. Administration of program — fee — rules. (1) The Montana centennial farm and ranch program is administered by the Montana historical society.

(2) The historical society may adopt rules for administering the program, including but not limited to rules:

(a) creating the application form and process;

(b) setting the application fee;

(c) creating guidelines for accepting or declining applications; and

(d) designing and awarding certificates to qualifying families.

(3) The fee provided for in this section must be deposited in an account in the state special revenue fund and may be used by the historical society only for maintaining the program.

History: En. Sec. 3, Ch. 399, L. 2009.

Part 13
Montana Museums Act of 2020

22-3-1301. Short title. This part may be cited as the "Montana Museums Act of 2020".

History: En. Sec. 1, Ch. 459, L. 2019.

22-3-1302. Authorization to construct Montana heritage center. (1) The department of administration is authorized to construct the Montana heritage center, which may include the remodel of the veterans' and pioneer memorial building.

(2) The department of administration shall, to the fullest extent possible, analyze, negotiate, and pursue purchasing the area bounded by Prospect avenue, 11th avenue, North Sanders street, and North Oakes street in Helena, Montana, containing approximately 9.4 acre lots, as the location of the Montana heritage center.

(3) The department of administration may construct the Montana heritage center in phases.

(4) This section constitutes legislative consent for the construction of the Montana heritage center within the meaning of 18-2-102.

History: En. Sec. 2, Ch. 459, L. 2019; amd. Sec. 12, Ch. 422, L. 2019.

22-3-1303. Account — Montana heritage center construction. There is an account in the capital projects fund established in 17-2-102 known as the Montana heritage center construction account. The tax collections allocated in 15-68-820(3)(a) must be deposited in the account until December 31, 2024. The money in the account is authorized to the department of administration and may be used only for capital construction of the Montana heritage center.

History: **En. Sec. 3, Ch. 459, L. 2019; amd. Sec. 2, Ch. 8, L. 2021.**

22-3-1304. Account — Montana heritage center operations. There is an account in the state special revenue fund established in 17-2-102 known as the Montana heritage center operations account. The tax collections allocated in 15-68-820(4)(a) must be deposited in the account. The money in the account may be used only for expenses incurred in the operation and maintenance of the Montana heritage center, which may include the veterans' and pioneer memorial building.

History: **En. Sec. 4, Ch. 459, L. 2019.**

22-3-1305. Historic preservation grant program — proposals — recommendations. (1) There is a historic preservation grant program established within the department of commerce. A person, association, or representative of a governing unit seeking a historic preservation grant under this section must submit a grant proposal to the department by March 1 of the year preceding the convening of a regular legislative session.

(2) The department shall review all proposals for historic preservation grants in consultation with the tourism advisory council and the state historical preservation office before they are submitted to the legislature.

(3) Consistent with the rules adopted in accordance with 22-3-1306, the department shall make recommendations to the legislature on each proposal submitted to the department.

(4) The department's recommendations to the legislature are advisory.

(5) The department shall present its recommendations to the appropriations committee of the legislature by the 15th day of a regular legislative session.

History: **En. Sec. 5, Ch. 459, L. 2019; amd. Sec. 1, Ch. 710, L. 2023.**

22-3-1306. Priorities for funding — rulemaking. (1) The department of commerce shall make recommendations for grants awarded under the historic preservation grant program to eligible entities for the preservation of historic sites, historical societies, or history museums in the state.

(2) Projects funded under this section must provide that a significant portion of the facility be open to public access and use. Projects that confer a limited public benefit are not eligible.

(3) The recommendations must be based on competitive criteria created by the department, as guided by the legislature. The criteria may include:

(a) the degree to which the project will protect:

(i) the building envelope, consisting of the structure's walls, roof, doors and windows, and foundation; and

(ii) its internal utility systems, including electricity, plumbing, and heat;

(b) the degree of economic stimulus or economic activity, including job creation and work creation for Montana contractors and service workers;

(c) the purpose of the project, including whether it provides features that establish or enhance security, climate control, or fire protection for museums or address infrastructure, maintenance, or building code issues at historic sites;

(d) the timing of the project, including access to matching funds, if needed, and approval of permits so that work can be completed without delay;

(e) the historic or heritage value related to the state of Montana;

(f) the successful track record or experience of the organization directing the project;

(g) the anticipated public benefit, including the extent the site or building will be open to the public and the degree of immediate facility use after project completion; and

(h) the degree of local contribution to the project. For-profit entities must provide a match equal to $1 for every $1 of grant funding received.

(4) The department of commerce shall adopt rules necessary to implement the historic preservation grant program. In adopting rules, the department shall look to the rules adopted for the Montana coal endowment program, the cultural and aesthetic grant program, and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs.

(5) Government applicants shall comply with Article II, sections 8 and 9, of the Montana constitution and with Title 2, chapter 3, parts 1 and 2, and Title 7. Nongovernment applicants are exempt from this provision.

History: En. Sec. 6, Ch. 459, L. 2019; amd. Sec. 3, Ch. 330, L. 2021; amd. Sec. 2, Ch. 710, L. 2023; amd. Sec. 1, Ch. 717, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 717, L. 2025. Amendment effective October 1, 2025.

22-3-1307. Historic preservation grant program account. (1) There is an account in the state special revenue fund established in 17-2-102 known as the historic preservation grant program account. The tax collections allocated in 15-68-820(3)(b) and (4)(c) must be deposited in the account.

(2) Money deposited in the account is subject to appropriation by the legislature and may be used only for historic preservation grants to be administered by the department of commerce.

(3) The department shall allocate and disburse historic preservation account funds as appropriated by the legislature.

History: En. Sec. 7, Ch. 459, L. 2019.

22-3-1308. Exemption from environmental review. The department of commerce is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, administering a grant program, or creating a grant program related to historic preservation pursuant to this part.

History: En. Sec. 2, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 14
National Heritage Areas and National Historic Trails

22-3-1401. Legislative approval of national designations. Any designation by the United States national park service of a national heritage area or national historic trail, pursuant to 54 U.S.C. 300101, et seq., that extends beyond federal land requires the approval of the legislature prior to a congressional act.

History: En. Sec. 1, Ch. 538, L. 2021.

TITLE 23
PARKS, RECREATION, SPORTS, AND GAMBLING

Ch.
1. Parks.
2. Recreation.
3. Athletics — Boxing. Repealed.
4. Horseracing.
5. Gambling.
6. Amusement Games.
7. State Lottery.

CHAPTER 1
PARKS

Part 1 — State Parks

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Chapter Cross-References

Acquisition and administration — scenic, historic, archaeologic, scientific, and recreational areas, Art. IX, sec. 4, Mont. Const.

State jurisdiction in national parks, 2-1-205, 2-1-207.

City or Town Council — condemnation of private property for park, 7-5-4106.

Deed of county land to other governmental entity for public park — authorization, 7-8-102, 7-16-102.

Governmental and public entities to take property by gift or devise, 7-8-103.

County Board of Park Commissioners, Title 7, ch. 16, part 23.

Municipal authority to establish, alter, and maintain parks, 7-16-4101.

Lodging facility use tax — distribution of proceeds, 15-65-121.

Montana Forest and Conservation Experiment Station established, 20-25-241.

Smith River Management Act, Title 23, ch. 2, part 4.

Unlawful obstruction of use of public park — nuisance, 27-30-101.

Tourist campgrounds and trailer courts, Title 50, ch. 52.

Gasoline tax — distribution and use, 60-3-201.
Acquisition of land adjoining or near highway for park, 60-4-103.
Power of local authority to regulate speed of vehicles in public parks, 61-12-101.
Servitude to conserve open space for park, historic, or recreational purposes, 70-17-102.
Unlawful dumping of refuse on public recreational property, 75-10-212.
City, County, or City-County Planning Board — taking property by gift or devise, 76-1-408.

Part 1
State Parks

23-1-101. Purposes — definitions. (1) For the purposes of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state, providing for their use and enjoyment, and contributing to the cultural, recreational, and economic life of the people and their health, the department and board are vested with the duties and powers set forth in this part.

(2) For the purposes of this part, the following definitions apply:

(a) "Board" means the state parks and recreation board established in 2-15-3406.

(b) "Commission" means the fish and wildlife commission established in 2-15-3402.

(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

(d) "Director" means the director of fish, wildlife, and parks as provided in 2-15-3401.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965; amd. Sec. 1, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-301; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 235, L. 2013.

23-1-102. Powers and duties of department. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historic sites;

(b) with the consent of the board, acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2);

(c) with the consent of the board, enter into a contract pursuant to 18-4-313(2)(e);

(d) accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state; and

(e) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purposes of this part.

(2) The department may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historic sites, state monuments, or any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1981; amd. Sec. 1, Ch. 418, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 30, Ch. 125, L. 2001; amd. Sec. 9, Ch. 235, L. 2013; amd. Sec. 2, Ch. 322, L. 2015.

Cross-References

Disposal of part of coal severance tax for acquisition and maintenance of parks, 15-35-108.
Fish and wildlife — Department of Fish, Wildlife, and Parks, Title 87, ch. 1, part 2.

23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation, or demise to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this section shall be given an appropriate name by the state board of land commissioners.

History: En. Sec. 1, Ch. 111, L. 1929; re-en. Sec. 1842.1, R.C.M. 1935; R.C.M. 1947, 62-312.

Cross-References

Organization and duties of Board of Land Commissioners, Title 77, ch. 1, part 2.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-104. Connecting roads. The department of transportation may construct, improve, and maintain, with state highway funds, connecting roads between existing state highways and state parks. Each road shall not exceed a total length of 10 miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973; R.C.M. 1947, 62-307; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Construction of highways by Department of Transportation, 60-2-201.

23-1-105. Fees and charges — use of motor vehicle registration fee. (1) (a) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6).

(b) There must be deposited into a state special revenue fund in the state treasury to the credit of the department:

(i) all money derived from the activities of the department, except as provided in subsection (5); and

(ii) money from marijuana taxes deposited under 16-12-111.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and is:

(a) 62 years of age or older;

(b) certified as disabled in accordance with rules adopted by the department; or

(c) a veteran of the armed forces. While camping at a discounted rate, the veteran shall carry proof of the person's veteran status, such as a DD form 214, U.S. department of veterans affairs identification card, or a driver's license indicating the person's veteran status.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(19)(a)

may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.

(7) Any increase in the motor vehicle registration fee collected pursuant to 61-3-321(19)(a) on or after January 1, 2012, that is dedicated to state parks must be used by the department for maintenance and operation of state parks.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967; amd. Sec. 1, Ch. 415, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-305; amd. Sec. 1, Ch. 188, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 304, L. 1985; amd. Sec. 1, Ch. 368, L. 1989; amd. Sec. 2, Ch. 339, L. 1991; amd. Sec. 4, Ch. 662, L. 1991; amd. Sec. 1, Ch. 126, L. 2001; amd. Sec. 66, Ch. 114, L. 2003; amd. Sec. 2, Ch. 601, L. 2003; amd. Sec. 20, Ch. 596, L. 2005; amd. Sec. 3, Ch. 420, L. 2007; amd. Sec. 4, Ch. 209, L. 2011; amd. Sec. 3, Ch. 247, L. 2011; amd. Sec. 1, Ch. 326, L. 2011; amd. Sec. 12, Ch. 6, Sp. L. November 2017; amd. Sec. 1, Ch. 406, L. 2019; amd. Sec. 38, I.M. No. 190, approved Nov. 3, 2020.

Cross-References

Deposit of part of gasoline tax in state park account, 60-3-201.

23-1-106. Rules — penalties — enforcement. (1) The department and the board may make rules governing the use, occupancy, and protection of the property under their control.

(2) A person who violates subsection (3) or a rule established pursuant to this section is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

(3) A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the board; and

(c) to report violations to the county attorney of the county in which they occur.

History: (1)En. Sec. 6, Ch. 48, L. 1939; amd. Sec. 2, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-306, R.C.M. 1947; (2)En. Sec. 3, Ch. 111, L. 1929; re-en. Sec. 1842.3, R.C.M. 1935; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965; amd. Sec. 5, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-314, R.C.M. 1947; R.C.M. 1947, 62-306, 62-314; amd. Sec. 2, Ch. 662, L. 1991; amd. Sec. 1, Ch. 121, L. 2009; amd. Sec. 10, Ch. 235, L. 2013.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-1-107. Cooperation. In carrying out the provisions of this part, the department may seek and accept the cooperation of other state and local agencies and the agencies of the federal government and may assist and cooperate with other state agencies, political subdivisions of the state, with neighboring states, and with the federal government in matters relating to acquiring, planning, establishing, developing, improving, or maintaining any park, parkway, recreational area, monument, historic site, or archaeological site.

History: En. Sec. 8, Ch. 48, L. 1939; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-308.

23-1-108. Acquisition of certain state parks, monuments, or historic sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department by July 1 of the year preceding the convening of a legislative session.

(2) The board shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historic sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased.

History: En. Sec. 3, Ch. 653, L. 1979; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 637, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 11, Ch. 235, L. 2013.

Cross-References

Disposal of severance taxes for acquisition and maintenance of parks, 15-35-108.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains. There is a Montana agricultural center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall acquire the center and museum, but the department may lease the facility to a qualified local government entity or nonprofit corporation or transfer ownership of the facility to a qualified local government entity for less than fair market value for so long as the local government entity or nonprofit corporation, as applicable, provides for development, operation, and maintenance of the center and museum without cost to the state of Montana. As part of any transfer of ownership of the facility, the department of fish, wildlife, and parks retains the right to reclaim ownership of the property at no cost to the state if the property ceases to be used as an agricultural center and museum for more than 1 year.

History: En. Sec. 1, Ch. 255, L. 1987; amd. Sec. 1, Ch. 97, L. 2001; amd. Sec. 1, Ch. 98, L. 2005.

23-1-110. Improvement or development of state park or fishing access site — required public involvement — rules. (1) Any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole.

History: En. Sec. 1, Ch. 367, L. 1991; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 12, Ch. 235, L. 2013.

23-1-111. Powers and duties of board — rulemaking — meetings. (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

(a) set the policies and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4). Except as provided in subsection (4), any decision by the board to divest the department of a fee title interest in a state park or a portion of a state park must be approved by the legislature in the next regular legislative session.

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;

(f) review and approve construction projects that have an estimated cost of more than $50,000;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

(4) (a) Approval of the legislature is not required for decisions regarding the transfer of a fee title interest in affiliated lands or land that is part of an exchange to consolidate ownership or address impacts to neighboring landowners.

(b) For the purposes of this subsection (4), the term "affiliated lands" means lands owned by the department but:

(i) not actively managed by the department; or

(ii) managed by another entity.

History: En. Sec. 2, Ch. 235, L. 2013; amd. Sec. 1, Ch. 127, L. 2019; amd. Sec. 1, Ch. 282, L. 2019.

23-1-112 through 23-1-114 reserved.

23-1-115. Short title. Sections 23-1-115 through 23-1-118 may be cited as the "Montana Primitive Parks Act".

History: En. Sec. 1, Ch. 501, L. 1993.

23-1-116. Primitive parks established. Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

(1) Wild Horse Island state park;

(2) Big Pine management area;

(3) Sluice Boxes state park;

(4) Pirogue Island state park;

(5) Medicine Rocks state park;

(6) Council Grove state park;

(7) Beaverhead Rock state park;

(8) Tower Rock state park; and

(9) Madison Buffalo Jump state park.

History: En. Sec. 2, Ch. 501, L. 1993; amd. Sec. 6, Ch. 476, L. 1995; amd. Sec. 1, Ch. 233, L. 2011; amd. Sec. 1, Ch. 207, L. 2019.

23-1-117. Limit on development of primitive parks. (1) The only development allowed in primitive parks designated in 23-1-116 is:

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, septic vaults, and water;

(b) improvements necessary to ensure the safe public use of boat ramps and docks;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new trails or improvement of trails;

(e) development of camp host pads, which may include a septic vault and electrical service designed to serve only the camp host pads;

(f) any measures required for land management, including forestry; and

(g) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park's primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a) or (1)(e);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of unnecessary new roads and paving of existing but previously unpaved roads.

History: **En. Sec. 3, Ch. 501, L. 1993; amd. Sec. 1, Ch. 264, L. 2001; amd. Sec. 1, Ch. 234, L. 2005; amd. Sec. 2, Ch. 233, L. 2011.**

23-1-118. Elimination of resident user fee — fee for nonresident use — penalty. (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in 23-1-116.

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105.

History: **En. Sec. 4, Ch. 501, L. 1993; amd. Sec. 3, Ch. 233, L. 2011; amd. Sec. 2, Ch. 207, L. 2019.**

23-1-119 and 23-1-120 reserved.

23-1-121. Park rangers — qualifications — powers and duties. (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall:

(a) enforce the laws of this state and the rules of the department and the board that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system;

(b) protect campers, picnickers, and other park users;

(c) keep the peace;

(d) supervise public use;

(e) maintain public order in all units of the state parks system; and

(f) perform all other duties prescribed by the department.

History: **En. Sec. 1, Ch. 662, L. 1991; amd. Sec. 13, Ch. 235, L. 2013.**

23-1-122. Enforcement powers of park rangers and game wardens. (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department, the board, or the commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c).

History: **En. Sec. 3, Ch. 662, L. 1991; amd. Sec. 14, Ch. 235, L. 2013.**

23-1-123. Use of exploding targets prohibited — definition — penalty. (1) The use of exploding targets on properties managed pursuant to this title is prohibited when the department of natural resources and conservation determines that fire danger is high, very high, or extreme.

(2) For the purposes of this section, "exploding targets" means commercial targets that explode when impacted by a high-velocity projectile or targets created by combining components, including but not limited to ammonium nitrate and aluminum powder, that explode when impacted by a high-velocity projectile.

(3) A person convicted of a violation of this section is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

History: En. Sec. 1, Ch. 513, L. 2021.

23-1-124 and 23-1-125 reserved.

23-1-126. Good neighbor policy — public recreational lands. (1) The good neighbor policy of public land use, as applied to public recreational lands, seeks a goal of no impact upon adjoining private and public lands by preventing impact on those adjoining lands from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy.

(2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to require the department of fish, wildlife, and parks to place maintenance as a priority over additional development at all state parks and fishing access sites.

(3) The restriction in subsection (2) does not apply to:

(a) development and improvement projects for which the legislature has appropriated funds prior to October 1, 1999;

(b) activities directly related to the historic preservation, restoration, or protection of assets in state parks;

(c) at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the federal energy regulatory commission's hydropower relicensing requirements and in conjunction with private entities, political subdivisions of the state of Montana, and federal agencies;

(d) at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir undertaken in conjunction with the U.S. army corps of engineers; or

(e) partnership projects as designated within the park master plan.

(4) Any development in state parks and fishing access sites beyond those defined as maintenance in 23-1-127 must be approved by the legislature.

History: En. Sec. 1, Ch. 474, L. 1999; amd. Sec. 2, Ch. 427, L. 2009.

23-1-127. Maintenance priority — maintenance defined. With regard to state parks and fishing access sites, implementation of the good neighbor policy requires that priority is to be given to maintenance of existing facilities, rather than to development or improvement. For purposes of 23-1-126 and this section, "maintenance" means:

(1) placing, cleaning, and stocking of latrines;

(2) garbage and litter removal;

(3) fence installation and repair of existing fences;

(4) weed control;

(5) implementation of safety and health measures required by law to protect the public;

(6) upkeep of established trails, roads, parking areas, boat docks, and similar facilities existing in state parks and fishing access sites on October 1, 1999;

(7) in-kind replacement of existing facilities, including electric lines or facilities, or replacement of those existing facilities with facilities that have less impact on the state park or fishing access site;

(8) erosion control;

(9) streambank stabilization;

(10) erection of barriers necessary to preserve riparian vegetation and habitat;

(11) minimal signage necessary to inform users of appropriate state park or fishing access site use and applicable regulations and of historical, natural, cultural, geographical, and geological features in the area;

(12) measures necessary to ensure compliance with the federal Americans With Disabilities Act of 1990, when applicable;

(13) planting of native trees, grasses, and shrubs for habitat stabilization and privacy shielding;

(14) installation of fire rings, picnic tables, and trash collection facilities; and

(15) other necessary activities and expenditures consistent with the good neighbor policy and the intent of 23-1-126, 23-1-128, and this section, including new trails, new boat ramps, and necessary new access roads into and within the state park or fishing access site.

History: En. Sec. 2, Ch. 474, L. 1999; amd. Sec. 3, Ch. 427, L. 2009.

23-1-128. Limits on camping in riparian areas and operation of off-highway vehicles. (1) In order to protect riparian vegetation, provide for stable streambanks, reduce erosion, and provide for nutrient barriers to protect the quality of rivers and streams, camping in a motor vehicle, as defined in 61-1-101, is discouraged within 25 feet of a river or stream in state parks and fishing access sites.

(2) The operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except:

(a) for administrative purposes; or

(b) as designated by the department on roads, trails, or specific areas.

History: En. Sec. 3, Ch. 474, L. 1999; amd. Sec. 20, Ch. 542, L. 2005; amd. Sec. 1, Ch. 191, L. 2011.

23-1-129. Reserved camp sites — limits. (1) Except as provided in subsection (3), no more than 80% of all available campsites may be reserved in a state park, recreational area, or public camping ground with overnight camping.

(2) This section applies to all state parks, recreational areas, and public camping grounds under the jurisdiction of the department as provided in 23-1-102 or the board as provided in 23-1-106 and 23-1-111, including fishing access sites if the site allows for overnight camping.

(3) This section does not apply to a river system where camping opportunity is limited to designated float-in sites only.

History: En. Sec. 1, Ch. 380, L. 2023.

23-1-130. Repealed. Sec. 1, Ch. 233, L. 2003.

History: En. Sec. 1, Ch. 266, L. 1999.

23-1-131. Repealed. Sec. 82, Ch. 509, L. 1995.

History: En. Secs. 2, 3, Ch. 574, L. 1993.

Part 2
State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park. In order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the department is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana-Missoula for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965; amd. Sec. 3, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-310; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Certain public lands held in trust, Art. X, sec. 11, Mont. Const.

23-1-202. Rules governing use. The department shall make such rules governing the park's use, occupancy, and the protection of the remaining lands of the grant as necessary to promote and continue the use of all of the lands for biological station purposes. The park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. Nothing herein contained prevents the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965; amd. Sec. 4, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-311.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

Part 3
Montana Conservation Corps
(Repealed)

23-1-301. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 1, Ch. 556, L. 1989; amd. Sec. 10, Ch. 534, L. 1993; amd. Sec. 1, Ch. 150, L. 1999.

23-1-302. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 2, Ch. 556, L. 1989; amd. Sec. 53, Ch. 418, L. 1995; amd. Sec. 75, Ch. 546, L. 1995.

23-1-303. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 3, Ch. 556, L. 1989; amd. Sec. 76, Ch. 546, L. 1995; amd. Sec. 1, Ch. 486, L. 1997; amd. Sec. 1, Ch. 465, L. 2001.

23-1-304 through 23-1-310 reserved.

23-1-311. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 4, Ch. 556, L. 1989.

23-1-312. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 5, Ch. 556, L. 1989; amd. Sec. 77, Ch. 546, L. 1995.

23-1-313. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 6, Ch. 556, L. 1989; amd. Sec. 24, Ch. 308, L. 1995.

23-1-314. Repealed. Sec. 2, Ch. 85, L. 2007.
History: En. Sec. 7, Ch. 556, L. 1989.

CHAPTER 2
RECREATION

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Part 1
Development of Outdoor Recreational Resources

23-2-101. Legislative findings — purpose. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this part to give authority to the department to plan and develop outdoor recreational resources in the state. That authority permits receiving and expending funds, including federal grants, for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-401; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 5, Ch. 353, L. 2019.

23-2-102. Department to implement federal act. The department is hereby designated as the state agency to represent and act for the state for the purpose of implementing the Land and Water Conservation Fund Act of 1965.

History: En. Sec. 2, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 6, Ch. 353, L. 2019.

23-2-103. Compliance with federal act authorized — powers of department. The department shall do those things necessary to comply with the provisions of the Land and Water Conservation Fund Act of 1965. Among other things, the department may:

(1) prepare a comprehensive statewide outdoor recreational plan that must contain an evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana and a program for implementation of the plan;

(2) accept and administer money paid by the secretary of the interior for approved projects;

(3) contract with other state agencies, cities, counties, and other political subdivisions of the state, private organizations, and agencies of the federal government;

(4) acquire, other than by eminent domain, and develop outdoor recreational areas and facilities as well as land and waters and interests in land and waters for such areas and facilities;

(5) for the purpose of implementing the Land and Water Conservation Fund Act of 1965, coordinate its activities with and represent the interests of all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-403; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 7, Ch. 353, L. 2019.

23-2-104 through 23-2-107 reserved.

23-2-108. Trails and recreational facilities account. (1) There is a trails and recreational facilities account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

(a) money collected pursuant to 61-3-321(19)(a)(iii); and

(b) money from marijuana taxes deposited under 16-12-111.

(3) Money in the account may only be used by the department to provide trails and recreational facilities grants pursuant to 23-2-109.

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

History: En. Sec. 1, Ch. 219, L. 2019; amd. Sec. 39, I.M. No. 190, approved Nov. 3, 2020.

23-2-109. Trails and recreational facilities grant program — rulemaking. (1) There is a trails and recreational facilities grant program administered by the department. The grant is called the trail stewardship grant program.

(2) Cities, counties, tribal governments, school districts, recreational clubs and organizations, and state and federal agencies are eligible to receive grant funds for the following projects:

(a) new trail and shared-use path construction;

(b) rehabilitation and maintenance of existing trails and shared-use paths;

(c) trailside and trailhead facilities, including but not limited to bridges, fencing, parking, bathrooms, latrines, picnic shelters, interpretation, trail signs, and trailside weed management;

(d) trail-related projects, economic impact studies, and feasibility and planning studies, including safety and ethics education;

(e) trail data and conditions collection for safety and planning; and

(f) equipment purchases and maintenance.

(3) (a) The department shall award the following percentages of available trail stewardship grant program funds:

(i) 40% to motorized projects;

(ii) 40% to nonmotorized projects; and

(iii) 20% to projects that serve both motorized and nonmotorized uses.

(b) The balance of unused funds for an apportionment in subsection (3)(a) may be used to fund projects for another apportionment in subsection (3)(a).

(c) An advance of up to 75% may be requested and provided at the time the grant is awarded for needed expenses, and a further 25% when the first advance is spent and reported.

(4) In making grants, the department shall consider the recommendations of the state trails advisory committee established pursuant to 23 U.S.C. 206.

(5) Entities receiving a grant may use up to 7% of the funds for administrative costs.

(6) Any funds awarded pursuant to this section that are not fully expended within 3 years must revert to the department and be deposited in the account established in 23-1-105.

(7) The department may adopt rules to implement this section.

History: En. Sec. 2, Ch. 219, L. 2019; amd. Sec. 1, Ch. 208, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 208, L. 2025. Amendment effective July 1, 2025.

23-2-110. Definitions. For the purposes of this part, the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Motorized equipment" means any motorized equipment authorized to be used on public lands by the land management agency with jurisdiction over those lands.

(3) "Summer motorized recreation trail" means a trail designated as open to motorized use and approved for inclusion in the summer motorized recreation trail grant program established in 23-2-113 by the land management agency with jurisdiction over the trail.

History: En. Sec. 1, Ch. 353, L. 2019.

23-2-111. Summer motorized recreation trail pass for residents — fees — penalties. (1) Except as provided in subsection (5) of this section, motorized equipment registered in Montana pursuant to 61-3-321 may not be operated on a summer motorized recreation trail unless a summer motorized recreation trail pass is affixed in a conspicuous place to the motorized equipment.

(2) The cost of a summer motorized recreation trail pass is $20. The trail pass is valid for 2 years and expires on December 31 of the second calendar year.

(3) The trail pass is not transferable. However, if motorized equipment is sold with an affixed trail pass, the trail pass may continue to be used by the purchaser until the pass expires.

(4) Application for the issuance of the trail pass must be made at locations and on forms prescribed by the department. The forms must include but are not limited to:

(a) the applicant's name and permanent street address;

(b) a physical description of the motorized equipment;

(c) proof of the motorized equipment's registration in Montana; and

(d) the applicant's name and permanent street address, as required in subsection (4)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

(5) A person renting motorized equipment registered pursuant to 61-3-321 is not required to purchase a trail pass but shall carry proof of rental if operating the motorized equipment on a summer motorized recreation trail.

(6) Money collected by payment of fees under this section must be used as follows:

(a) $2 must be remitted to the vendor who sold the trail pass if the vendor is not the department; and

(b) the remainder must be deposited in the summer motorized recreation trail account established in 23-2-112.

(7) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of $60. All fines collected under this section must be transmitted to the department of revenue for deposit of $40 of each $60 fine in the state general fund and $20 of each $60 fine in the summer motorized recreation trail account provided for in 23-2-112.

History: **En. Sec. 2, Ch. 353, L. 2019; amd. Sec. 1, Ch. 605, L. 2023.**

23-2-112. Summer motorized recreation trail account. (1) There is a summer motorized recreation trail account in the state special revenue fund established in 17-2-102.

(2) The following must be deposited in the account:

(a) pursuant to 23-2-111, revenue collected from the sale of summer motorized recreation trail passes; and

(b) penalties collected pursuant to 23-2-111(7) and 23-2-814(6).

(3) Funds deposited in the account must be used by the department pursuant to 23-2-113 and this subsection (3):

(a) up to 5% deposited in the account each year may be used by the department for administrative costs;

(b) $1 from each trail pass sold pursuant to 23-2-111 must be granted for mitigation and eradication of noxious weeds along summer motorized recreation trails; and

(c) the remainder must be granted for designation, maintenance, and improvement of summer motorized recreation trails.

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

History: **En. Sec. 3, Ch. 353, L. 2019; amd. Sec. 2, Ch. 605, L. 2023.**

23-2-113. Summer motorized recreation trail grant program — rulemaking. (1) There is a summer motorized recreation trail grant program by which the department may grant funds deposited in the account established in 23-2-112 to private clubs and organizations for the following purposes:

(a) to mark or sign, maintain, and improve summer motorized recreation trails;

(b) to mitigate and eradicate noxious weeds along summer motorized recreation trails;

(c) to provide motorized safety and ethics education; and

(d) to acquire various hand tools and chain saws needed to accomplish trail projects. The grantee shall provide to the department on request an itemized list and receipts for all purchases of hand tools and chain saws made using grant funds.

(2) Entities receiving a grant may use up to 7% of the funds for administrative costs.

(3) The department may require an applicant to provide a 10% match in cash or donated services to be eligible to receive a grant.

(4) In utilizing funds pursuant to this section, the department shall consider the recommendations of the off-highway vehicle advisory committee established pursuant to 23 U.S.C. 206.

(5) After awarding a grant pursuant to this section, the department shall, on request of the grantee, make an initial distribution of 50% of the funding to the entity receiving the award, a distribution of 40% on receipt by the department of expense receipts, and a distribution of the final 10% of the funding on receipt by the department of proof of completion of the project for which the money is awarded.

(6) The department may adopt rules to implement the provisions of 23-2-110 through 23-2-113.

History: **En. Sec. 4, Ch. 353, L. 2019; amd. Sec. 1, Ch. 153, L. 2021; amd. Sec. 3, Ch. 605, L. 2023.**

Part 2 reserved

Part 3
Recreational Use of Streams

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Smith River Management Act, Title 23, ch. 2, part 4.
Owner of land bounded by water, 70-16-201.
Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.
Title by prescription, 70-19-405.
Aquatic ecosystem protections, Title 75, ch. 7.
Public ways, 85-1-111.
Navigable waters, 85-1-112.
Surface water and ground water, Title 85, ch. 2.
Fish and Wildlife, Title 87.
Navigable waters subject to fishing rights, 87-2-305.

23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to

23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: **En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 360, Ch. 56, L. 2009; amd. Sec. 15, Ch. 235, L. 2013.**

Cross-References

Recreational purposes defined, 70-16-301.

Flood plain and floodway management, Title 76, ch. 5.

23-2-302. Recreational use permitted — limitations — exceptions. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting;

(e) overnight camping unless it is necessary for the enjoyment of the surface water and the campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any other permanent object;

(g) the placement or creation of any seasonal object, such as a duck blind or boat moorage, unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less;

(h) use of a streambed as a right-of-way for any purpose when water is not flowing in the streambed.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities that are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use those waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters that are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of those lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985; amd. Sec. 1, Ch. 327, L. 2015.

Cross-References

Access to surface waters by public bridge or county road right-of-way, 23-2-312.
Regulation of snowmobiles, Title 23, ch. 2, part 6.
Definition of enter or remain unlawfully, 45-6-201.
Migratory game bird hunting license, 87-2-411.
Game animal licenses, Title 87, ch. 2, part 5.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.
Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of the landowner's rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure that does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the department, including the cost of construction of notification signs of the route.

(f) Once the route is established, the department has the exclusive responsibility to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or the recreationist disagrees with the route described in subsection (3)(e), the person may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, must be borne by the contesting party or parties. All other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) This part does not address the issue of natural barriers or portage around the barriers, and this part does not make the portage lawful or unlawful.

History: **En. Sec. 3, Ch. 556, L. 1985; amd. Sec. 361, Ch. 56, L. 2009; amd. Sec. 2, Ch. 327, L. 2015.**

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.
Owner of land bounded by water, 70-16-201.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

23-2-312. Access to surface waters by public bridge or county road right-of-way. (1) A person may gain access to surface waters for recreational use by using:

(a) a public bridge, its right-of-way, and its abutments; and

(b) a county road right-of-way.

(2) When accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached.

(3) The provisions in 7-14-2134, 23-2-313, and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on April 13, 2009.

(4) For purposes of determining liability, a person accessing surface waters for recreational use pursuant to this section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes willful or wanton misconduct.

History: **En. Sec. 2, Ch. 201, L. 2009.**

23-2-313. Fencing for livestock control and public passage — negotiation — costs. (1) At county road bridges for which public access is authorized pursuant to 23-2-312, each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(5) must provide for public passage to surface waters for recreational use pursuant to this section.

(2) (a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:

(i) a stile;

(ii) a gate;

(iii) a roller;

(iv) a walkover;

(v) a wooden rail fence that provides for passage; or

(vi) any other method designed for public passage and livestock control or property management.

(b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.

(c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

(3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

History: **En. Sec. 3, Ch. 201, L. 2009.**

Cross-References

Legal fences defined, 81-4-101.

23-2-314 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, the landowner's agent, or the landowner's tenant other than that provided in subsection (2).

(2) A landowner, the landowner's agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) A supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is not liable to a person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: **En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987; amd. Sec. 362, Ch. 56, L. 2009.**

Cross-References

Liability, Title 27, ch. 1, part 7.
Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters. (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; or

(b) the entering or crossing of private property to reach surface waters.

History: **En. Sec. 5, Ch. 556, L. 1985.**

Cross-References

Title by prescription, 70-19-405.

Part 4
Management of Smith River

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Stream access, Title 23, ch. 2, part 3.
Gratuitous permittee for recreation, Title 70, ch. 16, part 3.
Aquatic ecosystem protections, Title 75, ch. 7.
Surface water and ground water, Title 85, ch. 2.
Stream protection, Title 87, ch. 5, part 5.

23-2-401. Short title. This part may be cited as the "Smith River Management Act".

History: **En. Sec. 1, Ch. 512, L. 1989.**

23-2-402. Purpose — intent. (1) The purpose of this part is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) This part may not be construed in any way to restrict a landowner's access to or use of the landowner's land, improvements, water rights, or adjacent waterways.

History: **En. Sec. 2, Ch. 512, L. 1989; amd. Sec. 363, Ch. 56, L. 2009.**

23-2-403. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the state parks and recreation board established in 2-15-3406.

(2) "Commission" means the fish and wildlife commission established in 2-15-3402.

(3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

History: **En. Sec. 3, Ch. 512, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 16, Ch. 235, L. 2013.**

23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between Camp Baker in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102.

History: **En. Sec. 4, Ch. 512, L. 1989; amd. Sec. 17, Ch. 235, L. 2013.**

23-2-405 and 23-2-406 reserved.

23-2-407. Management responsibility and plan. The department has the primary recreational management responsibility for the Smith River waterway described in 23-2-404, consistent with the purpose stated in 23-1-101 and 23-2-402. The Smith River waterway must be administered to:

(1) allow the continuation of compatible existing recreational and public land uses;

(2) maintain the opportunity to enjoy the natural scenic beauty and solitude; and

(3) conserve fish and wildlife and scientific and recreational values.

History: **En. Sec. 5, Ch. 512, L. 1989.**

23-2-408. Rulemaking authority. (1) The board has authority to provide for the administration of the Smith River waterway. The board may adopt rules to:

(a) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(i) consider the tolerance of adjacent landowners to recreational use;

(ii) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(iii) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(b) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public. The number of permits that can be purchased by nonresidents pursuant to this section may not exceed 10% of the available permits.

(c) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and the board:

(i) for the purposes of safety, health, and protection of property;

(ii) to preserve the experience of floating, fishing, and camping in a natural environment;

(iii) to protect the river's fish, wildlife, water, and canyon resources; and

(iv) to minimize conflicts between recreationists and private landowners; and

(d) establish recreational and commercial user fees for floating and camping on the Smith River waterway.

(2) The board shall adopt rules to establish and implement a bonus point system for residents and nonresidents.

History: **En. Sec. 6, Ch. 512, L. 1989; amd. Sec. 18, Ch. 235, L. 2013; amd. Sec. 1, Ch. 736, L. 2023.**

23-2-409. Allocation of user fees — expenditure of Smith River corridor enhancement account. (1) All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in the Smith River corridor enhancement account in the state special revenue fund to the credit of the department.

(2) (a) The following portions of recreational and commercial user fees deposited in the Smith River corridor enhancement account must be used for the purposes in subsection (2)(b):

(i) $50 of each commercial outfitter client fee;

(ii) all revenue from the sale of super permit lottery chances;

(iii) all revenue from sales of a resident-only $5 bonus point and a nonresident $125 bonus point; and

(iv) 5% of other float fee revenue, except for the nonrefundable permit application fee.

(b) The sum of the funds described in subsection (2)(a) must be expended to:

(i) protect and enhance the integrity of the natural and scenic beauty of the Smith River waterway and its recreational, fisheries, and wildlife values through the lease or acquisition of property, including lease or acquisition of partial interests in property by the department within the Smith River corridor;

(ii) pursue projects that serve to protect, enhance, and restore fisheries habitat, streambank stabilization, erosion control, and recreational values within the Smith River corridor, including Smith River tributaries; and

(iii) pursue projects that serve to maintain and enhance instream flows for recognized recreational and aquatic ecosystem values in the Smith River corridor.

(3) All other funds in the Smith River corridor enhancement account may be used to manage, operate, and maintain the Smith River corridor.

History: En. Sec. 7, Ch. 512, L. 1989; amd. Sec. 1, Ch. 86, L. 2005; amd. Sec. 1, Ch. 297, L. 2017; amd. Sec. 2, Ch. 736, L. 2023; amd. Sec. 1, Ch. 565, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 565, L. 2025. Amendment effective May 8, 2025.

23-2-410. Penalty — enforcement. (1) A person who violates a rule of the board adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than $50 or more than $500 or by imprisonment in a county jail for not more than 6 months, or both.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, the board, and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

History: En. Sec. 8, Ch. 512, L. 1989; amd. Sec. 5, Ch. 662, L. 1991; amd. Sec. 19, Ch. 235, L. 2013.

Part 5
Boats

23-2-501. Declaration of policy. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

History: En. Sec. 1, Ch. 285, L. 1959; R.C.M. 1947, 69-3501.

23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(2) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(3) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(4) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

(5) "Lienholder" means a person holding a security interest.

(6) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(7) "Motorboat" has the same meaning as provided in 61-1-101.

(8) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(9) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(10) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

(11) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(12) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(13) "Personal watercraft" has the same meaning as provided in 61-1-101.

(14) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

(15) "Sailboat" has the same meaning as provided in 61-1-101.

(16) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(17) "Vessel" has the same meaning as provided in 61-1-101.

(18) "Waters of this state" means any waters within the territorial limits of this state.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973; amd. Sec. 5, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3502; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 433, L. 1987; amd. Sec. 32, Ch. 83, L. 1989; amd. Sec. 1, Ch. 577, L. 1989; amd. Sec. 1, Ch. 728, L. 1991; amd. Sec. 1, Ch. 55, L. 2001; amd. Sec. 18, Ch. 477, L. 2003; amd. Sec. 4, Ch. 592, L. 2003; amd. Sec. 34, Ch. 130, L. 2005; amd. Sec. 1, Ch. 237, L. 2005; amd. Sec. 21, Ch. 596, L. 2005; amd. Sec. 29, Ch. 44, L. 2007; amd. Sec. 7, Ch. 329, L. 2007; amd. Sec. 3, Ch. 47, L. 2025; amd. Sec. 1, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 47, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel that is permitted by the owner to be operated, the identification number of the vessel, the departure date and time, and the expected time of return. The record must be preserved for at least 6 months.

(2) The owner of a boat livery or the owner's agent or employee may not permit any motorboat or any vessel permitted by the owner to be operated as a motorboat or vessel to depart from the owner's premises unless it has been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant to that section.

History: En. Sec. 7, Ch. 285, L. 1959; amd. Sec. 9, Ch. 124, L. 1977; R.C.M. 1947, 69-3507; amd. Sec. 364, Ch. 56, L. 2009.

23-2-504. Filing of rules. A copy of the rules adopted pursuant to this part and of any amendments thereto shall be filed in the office of the department and in the office of the secretary of state. Rules shall be published by the department in a convenient form and made easily available to all vessel operators.

History: En. Sec. 16, Ch. 285, L. 1959; amd. Sec. 15, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

23-2-505. Owner's civil liability. The owner of a vessel is liable for any injury or damage occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe ordinary care and operation that the rules of the common law require. However, the owner is not liable unless the vessel is being used with the owner's express or implied consent. It must be presumed that the vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of the owner's spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. This section may not be construed to relieve any other person from any liability that the person would otherwise have. However, this section may not be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

History: En. Sec. 15, Ch. 285, L. 1959; R.C.M. 1947, 69-3515; amd. Sec. 365, Ch. 56, L. 2009.

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the fish and wildlife commission; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended.

History: En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973; amd. Sec. 17, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3517; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 6, Ch. 662, L. 1991.

23-2-507. Penalty. (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified, are a misdemeanor and shall be punishable by a fine of not less than $15 or more than $500 or by imprisonment for a term up to 6 months, or both. All fine and bond forfeitures, except those paid to a justice's court, must be transmitted to the department of revenue for deposit in the general fund.

(2) If 23-2-525(4) is violated, 46-18-241 through 46-18-249 apply, except that the sentencing court shall order restitution and shall do so regardless of the court's disposition of the violator.

History: En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973; amd. Sec. 18, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3518; amd. Sec. 17, Ch. 557, L. 1987; amd. Sec. 2, Ch. 44, L. 1989; amd. Sec. 33, Ch. 83, L. 1989; amd. Sec. 40, Ch. 509, L. 1995; amd. Sec. 15, Ch. 257, L. 2001.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-508. Certificate of title. (1) Except as provided in subsection (3), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of title has first been obtained from the department of justice in accordance with the laws of this state.

(2) Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to a motorboat or sailboat 12 feet in length or longer.

(3) A person who has owned the same motorboat or sailboat 12 feet in length or longer since July 1, 1988, with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.

History: En. Sec. 1, Ch. 433, L. 1987; amd. Sec. 13, Ch. 649, L. 1987; amd. Sec. 1, Ch. 165, L. 1989; amd. Secs. 1, 14, Ch. 398, L. 1989; amd. Sec. 1, Ch. 535, L. 1989; amd. Sec. 22, Ch. 16, L. 1991; amd. Sec. 2, Ch. 463, L. 1991; amd. Sec. 1, Ch. 482, L. 1993; amd. Sec. 129, Ch. 574, L. 2001; amd. Sec. 19, Ch. 477, L. 2003.

23-2-509. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 2, Ch. 433, L. 1987; amd. Sec. 2, Ch. 535, L. 1989.

23-2-510. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 3, Ch. 433, L. 1987; amd. Sec. 1, Ch. 363, L. 1989; amd. Sec. 1, Ch. 375, L. 1989; amd. Sec. 2, Ch. 398, L. 1989; amd. Sec. 3, Ch. 535, L. 1989; amd. Sec. 1, Ch. 375, L. 1991; amd. Sec. 130, Ch. 574, L. 2001.

23-2-511. Operation of unnumbered motorboats or sailboats prohibited — display of registration decal. (1) A motorboat on the waters of this state that is propelled by a motor or an engine of any description or a sailboat on the waters of this state must be properly numbered and display a valid registration decal. A person may not operate or give permission for the operation of any motorboat or sailboat on the waters of this state unless the motorboat or sailboat is numbered and displays a valid registration decal in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat or sailboat is in effect;

(b) the identifying number set forth in the certificate of number and the valid registration decal are displayed on the motorboat or sailboat; and

(c) a temporary permit has been obtained from the county in which a motorboat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat or sailboat, the transferred motorboat or sailboat may be operated on the waters of this state for 40 consecutive calendar days immediately following the transfer of ownership without displaying the registration decal required by subsection (1) if, when the motorboat or sailboat is operated during those 40 consecutive calendar days, a temporary registration permit has been issued under 61-3-224 and is shown to a warden or other officer upon request.

History: En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973; amd. Sec. 1, Ch. 306, L. 1975; amd. Sec. 6, Ch. 124, L. 1977; R.C.M. 1947, 69-3503; amd. Sec. 1, Ch. 136, L. 1979; amd. Sec. 1, Ch. 311, L. 1985; amd. Sec. 1, Ch. 118, L. 1987; amd. Sec. 2, Ch. 375, L. 1991; amd. Sec. 6, Ch. 592, L. 2003; amd. Sec. 35, Ch. 130, L. 2005; amd. Sec. 2, Ch. 237, L. 2005; amd. Sec. 22, Ch. 596, L. 2005; amd. Sec. 2, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-512. Identifying number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by the fee prescribed in 61-3-321(10). Any alteration, change, or false statement contained in the application renders the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner. The identifying number must be displayed on the motorboat, sailboat, or personal watercraft.

(2) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within 40 days with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(3) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(4) If ownership is transferred, the purchaser shall notify the county treasurer within 40 days of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(5) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(6) (a) (i) The identifying number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft.

(ii) The identifying number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible.

(iii) The identifying number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore.

(iv) Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification.

(v) A number other than the identifying number assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(vi) A registration decal must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(7) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name if the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(1), (2), (3), (6) thru (14); amd. Sec. 2, Ch. 136, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 312, L. 1985; amd. Sec. 6, Ch. 649, L. 1987; amd. Sec. 2, Ch. 577, L. 1989; amd. Sec. 10, Ch. 728, L. 1991; amd. Sec. 1, Ch. 126, L. 1993; amd. Sec. 16, Ch. 257, L. 2001; amd. Sec. 131, Ch. 574, L. 2001; amd. Sec. 7, Ch. 592, L. 2003; amd. Sec. 3, Ch. 237, L. 2005; amd. Sec. 21, Ch. 542, L. 2005; amd. Sec. 3, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-513. Repealed. Sec. 59, Ch. 329, L. 2007.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(4), (5); amd. Sec. 3, Ch. 136, L. 1979; amd. Sec. 2, Ch. 312, L. 1985; amd. Sec. 34, Ch. 83, L. 1989; amd. Sec. 3, Ch. 375, L. 1991; amd. Sec. 20, Ch. 477, L. 2003; amd. Sec. 8, Ch. 592, L. 2003; amd. Sec. 4, Ch. 237, L. 2005; amd. Sec. 22, Ch. 542, L. 2005; amd. Sec. 23, Ch. 596, L. 2005.

23-2-514. Exemption from numbering provisions. A motorboat or sailboat is not required to be numbered under this part if it is:

(1) covered by a number in effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state if the motorboat or sailboat has not been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the state of principal use of the motorboat or sailboat and the owner shall apply for a Montana number, certificate of number, and registration decal.

(2) a motorboat or sailboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat or sailboat whose owner is the United States, a state, or a subdivision of a state; or

(4) a ship's lifeboat.

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973; R.C.M. 1947, 69-3506; amd. Sec. 4, Ch. 136, L. 1979; amd. Sec. 1, Ch. 168, L. 1979; amd. Sec. 9, Ch. 592, L. 2003; amd. Sec. 36, Ch. 130, L. 2005.

23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 must display a registration decal. For this purpose, the county treasurer, upon proof of payment of the registration fee as required by 61-3-321(10), shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat, sailboat, or personal watercraft do not expire while the motorboat, sailboat, or personal watercraft remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974; R.C.M. 1947, 69-3504.1; amd. Sec. 3, Ch. 312, L. 1985; amd. Sec. 2, Ch. 421, L. 1987; amd. Sec. 7, Ch. 649, L. 1987; amd. Sec. 3, Ch. 577, L. 1989; amd. Sec. 10, Ch. 592, L. 2003; amd. Sec. 37, Ch. 130, L. 2005; amd. Sec. 23, Ch. 542, L. 2005; amd. Sec. 24, Ch. 596, L. 2005; amd. Sec. 8, Ch. 329, L. 2007.

23-2-516. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 8, Ch. 649, L. 1987; amd. Sec. 4, Ch. 577, L. 1989; amd. Sec. 11, Ch. 592, L. 2003.

23-2-517. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 9, Ch. 649, L. 1987; amd. Sec. 5, Ch. 577, L. 1989; amd. Sec. 1, Ch. 402, L. 1997; amd. Sec. 2, Ch. 55, L. 2001; amd. Sec. 12, Ch. 592, L. 2003.

23-2-518. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 10, Ch. 649, L. 1987; amd. Sec. 6, Ch. 577, L. 1989; amd. Sec. 1, Ch. 511, L. 1993; amd. Sec. 2, Ch. 476, L. 1995; amd. Sec. 132, Ch. 574, L. 2001; amd. Sec. 13, Ch. 592, L. 2003.

23-2-519. Penalty — disposition. (1) Failure to pay the registration fee as provided for in 61-3-321(10) is a misdemeanor, punishable by a fine equal to four times the registration fee that is due on the motorboat, sailboat, personal watercraft, or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part.

History: En. Sec. 11, Ch. 649, L. 1987; amd. Sec. 7, Ch. 577, L. 1989; amd. Sec. 3, Ch. 476, L. 1995; amd. Sec. 14, Ch. 592, L. 2003; amd. Sec. 24, Ch. 542, L. 2005.

23-2-520. Repealed. Sec. 81, Ch. 477, L. 2003; Sec. 46, Ch. 592, L. 2003.

History: En. Sec. 9, Ch. 604, L. 1991.

23-2-521. Equipment. (1) Every motorboat or vessel must have aboard:

(a) one personal flotation device that is approved by the United States coast guard and that is in good and serviceable condition for each person on board, provided that a person who has not reached 12 years of age must have a life preserver that is approved by the United States coast guard and that is properly fastened to the person when occupying a motorboat or vessel under 26 feet in length while the motorboat or vessel is in motion;

(b) if carrying or using an inflammable or toxic fluid in an enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department that must be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a fixed fire extinguishing system that is approved by the United States coast guard, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry the portable fire extinguishers or fire extinguishing systems.

(2) The carburetor or carburetors of each of the engines of a motorboat or vessel (except outboard motors) that use gasoline as fuel must be equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of an internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 dbA or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005). The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat or vessel:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race;

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races; or

(iii) operated by an authorized agent of federal, state, or local government to carry out the duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), a vessel may not be equipped with a siren, and a person may not use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel shall sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels must display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel shall wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet must have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3505; amd. Sec. 1, Ch. 348, L. 1987; amd. Sec. 2, Ch. 728, L. 1991; amd. Sec. 38, Ch. 130, L. 2005.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

23-2-522. Discharge of waste from vessel prohibited. (1) A person may not discharge or cause, permit, or allow to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at a stream, river, or lake within the boundaries of the state of Montana.

(2) The department of environmental quality shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(3) In adopting the rules, the department shall use these definitions:

(a) "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage and also means any process to treat the sewage.

(b) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(4) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(5) This section may not be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973; amd. Sec. 11, Ch. 124, L. 1977; R.C.M. 1947, 69-3508.1; (2) thru (5) En. Sec. 9, Ch. 728, L. 1991; amd. Sec. 54, Ch. 418, L. 1995.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

23-2-523. Prohibited operation and mooring — enforcement. (1) A person may not operate or knowingly permit a person to operate a motorboat or vessel or manipulate waterskis, a surfboard, or a similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of a person by:

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitute reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not operate a motorboat, including a sailboat propelled by a motor of any kind, or manipulate waterskis, a surfboard, or a similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) It is unlawful for the owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control to authorize or knowingly permit the motorboat or vessel to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operate or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a United States coast guard approved personal flotation device in good and serviceable condition.

(7) A person may not moor a vessel to buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to a buoy or beacon, except in the act of maintenance work on the buoy or beacon, nor may any person deface, remove, or destroy a buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in

the officer's judgment the use creates an especially hazardous condition, the officer may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to a mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526 in order to protect the public health and safety. Unless operated on a river or stream in compliance with a rule adopted under 23-2-521, a person may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more than 10 horsepower. A person 13 or 14 years of age may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or unless accompanied by a person 18 years of age or older.

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or older; or

(b) by a person 13 or 14 years of age unless the person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973; amd. Sec. 10, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3508; amd. Sec. 1, Ch. 497, L. 1987; amd. Sec. 3, Ch. 728, L. 1991; amd. Sec. 12, Ch. 789, L. 1991; amd. Sec. 1, Ch. 345, L. 1995; amd. Sec. 122, Ch. 42, L. 1997.

23-2-524. Passing rule and right-of-way. (1) When two vessels are approaching each other "head on" or nearly so, each vessel shall bear to the right and pass the other vessel on its left side to avoid the risk of collision.

(2) When vessels approach each other obliquely or at right angles, the vessel that has the other vessel on the starboard side shall keep out of the way and shall, if the circumstances of the case require, avoid crossing ahead of the other vessel.

(3) A vessel overtaking another vessel shall keep out of the way of the vessel being overtaken.

(4) When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield to the sailboat in all cases.

History: En. Sec. 9, Ch. 285, L. 1959; R.C.M. 1947, 69-3509; amd. Sec. 4, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-525. Restricted areas. (1) A person may not anchor a vessel or place another obstacle on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not

greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The fish and wildlife commission may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973; R.C.M. 1947, 69-3510; amd. Sec. 1, Ch. 44, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 1, Ch. 569, L. 1999; amd. Sec. 5, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-526. Overloading — overpowering — noise limitations. (1) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(2) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(3) Except as provided in 23-2-523(9), for the purposes of 45-8-101 and 45-8-111, the operation of a motorboat or personal watercraft that emits noise in excess of 86 dbA when measured at a distance of 50 feet or emits exhaust noise in excess of 90 dbA measured 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005) is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state.

History: En. Sec. 11, Ch. 285, L. 1959; R.C.M. 1947, 69-3511; (3)En. Sec. 2, Ch. 694, L. 1983; amd. Sec. 4, Ch. 728, L. 1991.

23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as the operator can do so without serious danger to the operator's own vessel, crew, and passengers, shall render to other persons affected by the collision, accident, or other casualty assistance that may be practicable and that may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty. The operator shall give the operator's name, address, and identification of the operator's vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. A person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $2,000 shall immediately report the collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

(a) conduct an appropriate investigation of the collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department.

History: En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973; amd. Sec. 12, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3512; amd. Sec. 366, Ch. 56, L. 2009; amd. Sec. 6, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-528. Transmittal of information to U.S. officials. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the department pursuant to subsections (2) and (3) of 23-2-527, as amended, shall be transmitted to such official or agency of the United States.

History: En. Sec. 13, Ch. 285, L. 1959; amd. Sec. 13, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3513.

23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The fish and wildlife commission shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed.

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977; R.C.M. 1947, 69-3514; amd. Sec. 5, Ch. 136, L. 1979; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 5, Ch. 728, L. 1991.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

Passing rule and right-of-way, 23-2-524.

23-2-530. Education program. The department shall coordinate a statewide boat safety education program, including a home study testing program for motorboat operators.

History: En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.1; amd. Sec. 6, Ch. 728, L. 1991.

23-2-531. Personal watercraft operation. In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type of personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3)(b) or when towing a waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

(b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) on any surface waters restricted in whole or in part by rule of the fish and wildlife commission;

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation.

History: En. Sec. 7, Ch. 728, L. 1991; amd. Sec. 2, Ch. 345, L. 1995; amd. Sec. 2, Ch. 569, L. 1999; amd. Sec. 7, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-532. Restrictions on manufacture and sale. A motorboat or vessel that fails to comply with the provisions of 23-2-521(3) may not be manufactured in Montana after April 29, 1991, and may not be sold or offered for sale in Montana after January 1, 1994.

History: En. Sec. 8, Ch. 728, L. 1991.

23-2-533. Use of allocated funds for boating facilities. (1) Funds allocated to the motorboat account must be used by the department to improve, operate, or maintain boating facilities.

(2) The department may use the funds to match available federal funds to the extent possible.

History: En. Sec. 2, Ch. 511, L. 1993; amd. Sec. 4, Ch. 476, L. 1995; amd. Secs. 1, 5, Ch. 95, L. 2001; amd. Sec. 247, Ch. 574, L. 2001; amd. Sec. 8, Ch. 299, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 299, L. 2025. Amendment effective May 1, 2025.

23-2-534. Funding of state recreational boating safety program — certification of county programs — administration by counties. (1) The department may in its discretion use available state funds and federal matching funds to contract with counties to implement designated parts of the state recreational boating safety program. If a county accepts a grant, the county shall agree to implement a program that is certified by the department as fulfilling the requirements of the state recreational boating safety program.

(2) A county may allocate funds to the department for the recreational boating safety program. This money must be used by the department for contracts with counties for the recreational boating safety program.

History: En. Sec. 1, Ch. 476, L. 1995; amd. Sec. 5, Ch. 95, L. 2001; amd. Sec. 247, Ch. 574, L. 2001.

23-2-535. Alcohol and drug concentration standards — evidence admissible — administration of tests — definition. (1) The inferences contained in 61-8-1002 apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol or drugs in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, oral fluid, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-1019 and the definition of alcohol concentration provided in 61-8-1001 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in 61-1-101.

History: En. Sec. 2, Ch. 497, L. 1987; amd. Sec. 13, Ch. 789, L. 1991; amd. Sec. 367, Ch. 56, L. 2009; amd. Sec. 18, Ch. 498, L. 2021; amd. Sec. 1, Ch. 151, L. 2023; amd. Sec. 4, Ch. 47, L. 2025; amd. Sec. 1, Ch. 264, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 47, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 264, L. 2025. Amendment effective October 1, 2025.

23-2-536. Repealed. Sec. 9, Ch. 299, L. 2025.

History: En. Sec. 3, Ch. 511, L. 1993; amd. Sec. 5, Ch. 476, L. 1995; amd. Sec. 123, Ch. 42, L. 1997.

23-2-537 through 23-2-539 reserved.

23-2-540. Repealed. Sec. 59, Ch. 329, L. 2007.

History: En. Sec. 1, Ch. 384, L. 1999.

23-2-541. Aquatic invasive species prevention pass for nonresident vessels — rulemaking. (1) In order for a motorized vessel exempt from registration in Montana pursuant to 61-3-321 or a nonmotorized vessel owned by a nonresident to launch on the waters of this state, the operator must possess an aquatic invasive species prevention pass purchased for the vessel, available for inspection either in physical form or as an electronic copy at the request of a warden, another officer, or an employee of the department. The pass must include a description of the vessel for which it was purchased.

(2) (a) The annual fee for an aquatic invasive species prevention pass purchased pursuant to this section is:

(i) $10 for a nonmotorized vessel; and

(ii) $30 for a motorized vessel.

(b) The pass expires at the end of each calendar year and is not transferable between vessels.

(3) Fees collected pursuant to this section must be deposited in the invasive species account established in 80-7-1004.

(4) The department may adopt rules to implement the provisions of this section.

(5) The provisions of this section do not apply to a motorized vessel owned or controlled by the United States or any state, county, city, special district as defined in 18-8-202, or tribal government or to a motorized vessel that meets the description of property exempt from taxation under 15-6-201(1)(d), (1)(n), or (1)(o) or 15-6-215.

(6) For the purposes of this section, the term "nonmotorized vessel" includes catamarans, drift boats, kayaks, rafts, and sailboats.

History: En. Sec. 1, Ch. 356, L. 2019.

Part 6
Snowmobiles

23-2-601. Definition of terms. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Mechanical transport" means any contrivance for moving a person over land that has moving parts and provides a mechanical advantage to the user.

(6) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(7) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(8) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(9) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(10) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(11) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(12) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.

(13) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(14) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(15) "Snowmobiler" means any person operating or riding a snowmobile.

History: En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 421, L. 1977; R.C.M. 1947, 53-1012; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 363, L. 1979; amd. Sec. 21, Ch. 477, L. 2003; amd. Sec. 15, Ch. 592, L. 2003; amd. Sec. 25, Ch. 542, L. 2005; amd. Sec. 9, Ch. 329, L. 2007; amd. Sec. 8, Ch. 123, L. 2013; amd. Sec. 3, Ch. 416, L. 2015.

23-2-602. Report of stolen and recovered snowmobiles. The reporting of stolen and recovered snowmobiles must be conducted in the same manner as the reporting of stolen and recovered motor vehicles provided for in 61-3-106.

History: En. Sec. 6, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1977; amd. Sec. 11, Ch. 421, L. 1977; R.C.M. 1947, 53-1017; amd. Sec. 1, Ch. 351, L. 1993.

23-2-603 through 23-2-610 reserved.

23-2-611. Certificate of title. (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of title has first been obtained from the department of justice in accordance with the laws of this state. A certificate of title is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to snowmobiles.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974; amd. Sec. 2, Ch. 421, L. 1977; R.C.M. 1947, 53-1013; amd. Sec. 2, Ch. 363, L. 1979; amd. Sec. 24, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 164, L. 1989; amd. Secs. 3, 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 535, L. 1989; amd. Sec. 23, Ch. 16, L. 1991; amd. Sec. 3, Ch. 463, L. 1991; amd. Sec. 2, Ch. 351, L. 1993; amd. Sec. 2, Ch. 482, L. 1993; amd. Sec. 133, Ch. 574, L. 2001; amd. Sec. 22, Ch. 477, L. 2003.

Cross-References

Use of snowmobiles on streams, 23-2-302.

Water pollution control, Title 75, ch. 5.

23-2-612. Repealed. Sec. 81, Ch. 477, L. 2003.

History: (1), (2), (5)En. Sec. 3, Ch. 434, L. 1971; amd. Sec. 1, Ch. 124, L. 1977; amd. Sec. 2, Ch. 402, L. 1977; amd. Sec. 3, Ch. 421, L. 1977; Sec. 53-1014, R.C.M. 1947; (3), (4)En. 53-1013.1 by Sec. 1, Ch. 402, L. 1977; Sec. 53-1013.1, R.C.M 1947; R.C.M. 1947, 53-1013.1, 53-1014; amd. Sec. 3, Ch. 363, L. 1979; amd. Sec. 25, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 341, L. 1985; amd. Sec. 2, Ch. 363, L. 1989; amd. Sec. 2, Ch. 375, L. 1989; amd. Sec. 4, Ch. 398, L. 1989; amd. Sec. 5, Ch. 535, L. 1989; amd. Sec. 134, Ch. 574, L. 2001.

23-2-613. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 4, Ch. 434, L. 1971; amd. Sec. 4, Ch. 421, L. 1977; R.C.M. 1947, 53-1015; amd. Sec. 4, Ch. 363, L. 1979; amd. Sec. 6, Ch. 535, L. 1989.

23-2-614. Exemptions. (1) (a) The provisions of this part with respect to registration, registration decals, certificates of title, certificates of ownership, and winter trail passes do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of this part.

(2) The provisions of this part with respect to registration, registration decals, certificates of title, certificates of ownership, and winter trail passes do not apply to unregistered snowmobiles owned by nonresidents of Montana who use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(1), (3); amd. Sec. 8, Ch. 363, L. 1979; amd. Sec. 23, Ch. 477, L. 2003; amd. Sec. 1, Ch. 591, L. 2003; amd. Sec. 17, Ch. 592, L. 2003; amd. Sec. 39, Ch. 130, L. 2005; amd. Sec. 26, Ch. 542, L. 2005; amd. Sec. 30, Ch. 44, L. 2007; amd. Sec. 10, Ch. 329, L. 2007; amd. Sec. 9, Ch. 123, L. 2013; amd. Sec. 4, Ch. 416, L. 2015; amd. Sec. 1, Ch. 22, L. 2023.

23-2-615. Repealed. Sec. 9, Ch. 153, L. 2021.

History: En. 53-1016.1 by Sec. 6, Ch. 421, L. 1977; R.C.M. 1947, 53-1016.1; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 351, L. 1993; amd. Sec. 17, Ch. 257, L. 2001; amd. Sec. 135, Ch. 574, L. 2001; amd. Sec. 24, Ch. 477, L. 2003; amd. Secs. 2, 3, Ch. 591, L. 2003; amd. Sec. 31, Ch. 44, L. 2007; amd. Sec. 1, Ch. 199, L. 2007; amd. Sec. 8, Ch. 353, L. 2019.

23-2-615.1. Renumbered 23-2-626. Code Commissioner, 2001.

23-2-616. Registration and registration decal — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person unless it has been registered and a registration decal is displayed in a conspicuous place on the left side of the cowl.

(2) (a) A Montana resident who owns a snowmobile operated on public land shall register the snowmobile at the county treasurer's office in the county where the owner resides.

(b) A county treasurer shall register a snowmobile if:

(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.

(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.

(3) The owner registering a snowmobile shall pay the registration fee prescribed in 61-3-321(11) and, if the snowmobile has previously been registered, show the county treasurer the registration receipt for the most recent year in which the snowmobile was registered. Upon payment of the proper fee, the treasurer shall issue a registration receipt that contains information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the application to the department of justice and shall issue to the applicant a registration decal in the style and design prescribed by the department of justice.

(5) The county treasurer may not register a snowmobile under this section unless the applicant has paid the registration fee.

(6) All money collected from payment of registration fees and all interest accruing from use of this money must be forwarded to the state, as provided in 15-1-504, for deposit in the state general fund.

History: (1) thru (6)En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 17, Ch. 421, L. 1977; amd. Sec. 44, Ch. 566, L. 1977; R.C.M. 1947, 53-1025; amd. Sec. 5, Ch. 363, L. 1979; amd. Sec. 26, Ch. 712, L. 1979; (7)En. Sec. 17, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 421, L. 1987; amd. Sec. 5, Ch. 398, L. 1989; amd. Sec. 4, Ch. 351, L. 1993; amd. Sec. 18, Ch. 257, L. 2001; amd. Sec. 136, Ch. 574, L. 2001; amd. Sec. 25, Ch. 477, L. 2003; amd. Sec. 18, Ch. 592, L. 2003; amd. Sec. 27, Ch. 542, L. 2005.

23-2-617. Duplicate decal. If a registration decal is lost, mutilated, or becomes illegible, the person to whom the registration decal was issued shall immediately make application for and may obtain a duplicate of the registration decal upon payment of a fee of $1 to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973; amd. Sec. 18, Ch. 421, L. 1977; R.C.M. 1947, 53-1025.1; amd. Sec. 27, Ch. 712, L. 1979; amd. Sec. 19, Ch. 592, L. 2003.

23-2-618. Repealed. Sec. 46, Ch. 592, L. 2003.

History: En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974; amd. Sec. 1, Ch. 327, L. 1975; amd. Sec. 4, Ch. 124, L. 1977; amd. Sec. 3, Ch. 402, L. 1977; R.C.M. 1947, 53-1026; amd. Sec. 6, Ch. 363, L. 1979; amd. Sec. 28, Ch. 712, L. 1979.

23-2-619. Repealed. Sec. 59, Ch. 329, L. 2007.

History: En. Sec. 3, Ch. 494, L. 1973; amd. Sec. 21, Ch. 421, L. 1977; R.C.M. 1947, 53-1029; amd. Sec. 7, Ch. 363, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 398, L. 1989; amd. Sec. 5, Ch. 351, L. 1993; amd. Sec. 2, Ch. 384, L. 1999; amd. Sec. 26, Ch. 477, L. 2003; amd. Sec. 28, Ch. 542, L. 2005; amd. Sec. 26, Ch. 596, L. 2005.

23-2-620. Repealed. Sec. 81, Ch. 477, L. 2003; Sec. 46, Ch. 592, L. 2003.

History: En. Sec. 10, Ch. 604, L. 1991.

23-2-621. Registration of a snowmobile owned and operated solely as a collector's item. (1) An owner of a snowmobile that is more than 25 years old and that is used solely as a collector's item and not for general recreational purposes may file with the county treasurer an application for the registration of the snowmobile. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom the snowmobile was purchased;

(c) the make, the year and number of the model, and the manufacturer's identification number and serial number of the snowmobile; and

(d) that the snowmobile is owned and operated solely as a collector's item and not for general recreational purposes.

(2) The registration fee for a snowmobile registered under subsection (1) is $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the county treasurer shall file the application, register the snowmobile in the manner specified in 23-2-616, and deliver to the applicant a license plate or decal bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance may not be shown on the plate or decal.

(5) Annual renewal of the registration of a snowmobile registered under this section is not required, and the registration is valid as long as the snowmobile is in existence. Upon sale of the snowmobile, the purchaser shall renew the registration and pay the license fee required in subsection (2).

History: En. Sec. 13, Ch. 351, L. 1993.

23-2-622. Registration of racing snowmobile not required. A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of title requirements of 61-3-216 through 61-3-222 and registration under 23-2-616 or 61-3-224.

History: En. Sec. 12, Ch. 351, L. 1993; amd. Sec. 124, Ch. 42, L. 1997; amd. Sec. 27, Ch. 477, L. 2003.

23-2-623 through 23-2-625 reserved.

23-2-626. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 4, Ch. 712, L. 1979; amd. Sec. 2, Ch. 402, L. 1997; Sec. 23-2-615.1, MCA 1999; redes. 23-2-626 by Code Commissioner, 2001; amd. Sec. 20, Ch. 592, L. 2003.

23-2-627 through 23-2-630 reserved.

23-2-631. Operation on public roads, streets, and highways. (1) A person may not operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by this part unless equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of this part must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of this part if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to the extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971; amd. Sec. 12, Ch. 421, L. 1977; R.C.M. 1947, 53-1018; amd. Sec. 1, Ch. 210, L. 1995; amd. Sec. 28, Ch. 477, L. 2003; amd. Sec. 29, Ch. 542, L. 2005; amd. Sec. 11, Ch. 329, L. 2007; amd. Sec. 10, Ch. 123, L. 2013; amd. Sec. 2, Ch. 153, L. 2021.

Cross-References

Driver's licenses, Title 61, ch. 5.

23-2-632. Unlawful operation of snowmobiles. (1) It is unlawful for a person to operate a snowmobile on a public street, public highway, established snowmobile trail, public snowmobile area on public lands or waters, or lands or waters under easement or lease for snowmobiling and adjacent snowmobiling areas on private lands or waters where public snowmobiling is permitted:

(a) at a rate of speed greater than provided by law for motor vehicles, unless travel on the street, highway, or trail has been closed to motor vehicle traffic or unless drifting snow or snow cover has rendered travel by motor vehicles impractical or impossible;

(b) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

(c) if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation of a snowmobile in violation of subsection (1) by a person who by reason of age or physical or mental disability is incapable of operating the snowmobile safely under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971; amd. Sec. 3, Ch. 124, L. 1977; amd. Sec. 13, Ch. 421, L. 1977; R.C.M. 1947, 53-1019; amd. Sec. 6, Ch. 136, L. 1979; amd. Sec. 6, Ch. 351, L. 1993.

Cross-References

Careless and reckless driving — speed limits, 61-8-301 through 61-8-303, 61-8-311, 61-8-313.

23-2-633. Other unlawful operation. A person while operating a snowmobile may not:

(1) use the snowmobile for the purpose of driving, rallying, or harassing game animals, game birds, or fur-bearing animals of the state or livestock, including ostriches, rheas, and emus. An owner of livestock is not prohibited from managing or driving the owner's livestock by the use of snowmobiles and may direct other persons to manage or drive the owner's livestock by use of snowmobiles. The department of fish, wildlife, and parks, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles.

(2) discharge a firearm from or upon a snowmobile;

(3) operate the snowmobile without a lighted headlight and taillight between the hours of dusk and dawn.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(1); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 206, L. 1995.

23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, each snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Each person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in a manner so that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this part shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of this part, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices used by the international snowmobile manufacturers association or with other standards for measurement of sound level that the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent.

History: **En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(part); amd. Sec. 9, Ch. 363, L. 1979; amd. Sec. 7, Ch. 351, L. 1993; amd. Sec. 29, Ch. 477, L. 2003; amd. Sec. 30, Ch. 542, L. 2005; amd. Sec. 12, Ch. 329, L. 2007; amd. Sec. 11, Ch. 123, L. 2013; amd. Sec. 3, Ch. 153, L. 2021.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

23-2-635. Accidents involving snowmobiles. The owner or operator of a snowmobile that is involved in any accident, collision, or upset in which personal injury occurs to any person shall report the accident or occurrence to the nearest law enforcement agency. An accident involving personal injury or a fatality must be reported immediately or as soon as practicable.

History: **En. Sec. 10, Ch. 434, L. 1971; R.C.M. 1947, 53-1021; amd. Sec. 8, Ch. 351, L. 1993.**

Cross-References

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

23-2-636. Winter trail pass — fees — penalties. (1) (a) Except as provided in subsection (4), to be eligible to operate a snowmobile or a dog sled or to use motorized equipment or mechanical transport in snowmobile areas groomed with a grant or funding assistance awarded by the department, a person shall first purchase a winter trail pass for:

(i) $20, if the snowmobile or motorized equipment is registered in Montana pursuant to 61-3-321 or the person operating the dog sled or mechanical transport is a resident as determined under 1-1-215. A trail pass purchased pursuant to this subsection (1)(a)(i) is valid for up to 2 years from the date of purchase but no later than June 30 of the second year.

(ii) $35, if the snowmobile or motorized equipment is exempt from registration in Montana pursuant to 61-3-321 or the person operating the dog sled or mechanical transport is not a resident as determined under 1-1-215. A trail pass purchased pursuant to this subsection (1)(a)(ii) is valid for up to 1 year from the date of purchase but no later than June 30 of the following year.

(b) In addition to the payment for a winter trail pass pursuant to subsection (1)(a), if the snowmobile or motorized equipment is operated as a rental from a rental business licensed in Montana, the renter shall pay a $5 trail enhancement rental fee to the rental vendor each time the snowmobile or motorized equipment is rented. The rental vendor must pay $5 to the department for each snowmobile or motorized equipment rented each month. The payment must be made by the first week of the month following the collection of the trail enhancement rental fee. The department shall distribute the trail enhancement rental fee as provided in subsection (5)(b).

(2) The trail pass must be affixed in a conspicuous place to each snowmobile, dog sled, motorized equipment, or mechanical transport used. A trail pass is not transferable between a snowmobile, dog sled, motorized equipment, or mechanical transport. If a snowmobile is sold with an affixed trail pass, the trail pass may continue to be used by the purchaser of the snowmobile until it expires.

(3) (a) Application for the issuance of the trail pass must be made at locations and on forms prescribed by the department. The forms must include but are not limited to the applicant's name and permanent street address.

(b) The applicant's name and permanent street address, as required in subsection (3)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

(4) The purchase of a trail pass is not required for:

(a) a person renting a snowmobile registered pursuant to 61-3-321(11)(c), but the person shall carry proof of rental if operating the snowmobile in a snowmobile area that otherwise requires a trail pass pursuant to subsection (1);

(b) a person participating in a sanctioned dog sled race; or

(c) motorized equipment exempt from registration in Montana pursuant to 61-3-321(14).

(5) (a) Except for 50 cents, which is a search and rescue surcharge deposited pursuant to 87-1-601, money collected from payment of fees under subsection (1)(a) must be deposited in the state special revenue fund to the credit of the department and used as follows:

(i) $2 must be remitted to the vendor who sold the trail pass if the vendor is not the department;

(ii) $1.50 must be used for the enforcement of snowmobile laws pursuant to this part; and

(iii) the remainder must be used by the department for the statewide snowmobile trail grooming program.

(b) Money collected from payment of the trail enhancement rental fee under subsection (1)(b) must be deposited in the state special revenue fund to the credit of the department and used as follows:

(i) 2% of the fee must be used by the department for the operation of the trail grooming program, including but not limited to repairs for grooming vehicles; and

(ii) the remainder must be distributed by the department to entities that groom and maintain trails in areas in which snowmobile or motorized vehicle rental entities operate.

(6) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of not less than $40 or more than $100.

(7) To be eligible for a trail pass pursuant to this section, an all-terrain vehicle must have a wheel base of less than 50 inches in width and be equipped with tracks instead of wheels while operating on a groomed snowmobile trail administered by the department.

(8) For the purposes of this section:

(a) "motorized equipment" means any motorized equipment allowed by a snowmobile area operator; and

(b) "snowmobile" includes snowmobiles used for demonstration purposes by snowmobile dealers.

History: En. Sec. 1, Ch. 416, L. 2015; amd. Sec. 1, Ch. 187, L. 2017; amd. Sec. 9, Ch. 353, L. 2019; amd. Sec. 4, Ch. 153, L. 2021; amd. Sec. 4, Ch. 605, L. 2023; amd. Sec. 1, Ch. 172, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 172, L. 2025. Amendment effective October 1, 2025.

23-2-637 through 23-2-640 reserved.

23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of this part, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this part.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish and wildlife commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part.

History: Ap. p. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 15, Ch. 421, L. 1977; Sec. 53-1022, R.C.M. 1947; Ap. p. Sec. 5, Ch. 435, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 20, Ch. 421, L. 1977; Sec. 53-1028, R.C.M. 1947; R.C.M. 1947, 53-1022, 53-1028; amd. Sec. 7, Ch. 662, L. 1991; amd. Sec. 9, Ch. 351, L. 1993; amd. Sec. 30, Ch. 477, L. 2003; amd. Sec. 31, Ch. 542, L. 2005; amd. Sec. 13, Ch. 329, L. 2007; amd. Sec. 12, Ch. 123, L. 2013; amd. Sec. 5, Ch. 153, L. 2021.

23-2-642. Penalties. (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable registration fee payable under 61-3-321.

(2) A person who violates any other provision of this part or a rule adopted pursuant to this part shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile meets the sound level limitations imposed by this part is subject to the penalty provisions of subsection (2) if the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by this part constitutes a separate violation.

History: (1)En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; Sec. 53-1027, R.C.M. 1947; (2) thru (4)En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974; amd. Sec. 16, Ch. 421, L. 1977; Sec. 53-1023, R.C.M. 1947; R.C.M. 1947, 53-1023, 53-1027(1); amd. Sec. 29, Ch. 712, L. 1979; amd. Sec. 10, Ch. 351, L. 1993; amd. Sec. 31, Ch. 477, L. 2003; amd. Sec. 21, Ch. 592, L. 2003; amd. Sec. 32, Ch. 542, L. 2005; amd. Sec. 14, Ch. 329, L. 2007; amd. Sec. 13, Ch. 123, L. 2013; amd. Sec. 6, Ch. 153, L. 2021.

Cross-References

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-643. Regulation by local government precluded. No political subdivision of this state may prescribe further licensing or registration of snowmobiles, and no political subdivision may levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(2).

23-2-644. Deposit of funds from fines and forfeitures. All fines and forfeitures collected under this part relating to snowmobiles, except those collected by a justice's court, must be transmitted to the state, as provided in 15-1-504, for deposit in the state general fund.

History: En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; R.C.M. 1947, 53-1027(2); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 557, L. 1987; amd. Sec. 41, Ch. 509, L. 1995; amd. Sec. 19, Ch. 257, L. 2001; amd. Sec. 32, Ch. 477, L. 2003; amd. Sec. 33, Ch. 542, L. 2005; amd. Sec. 15, Ch. 329, L. 2007; amd. Sec. 14, Ch. 123, L. 2013; amd. Sec. 5, Ch. 416, L. 2015.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

23-2-645 through 23-2-650 reserved.

23-2-651. Purpose. The legislature finds that snowmobiling is a major recreational sport and a major industry in this state and recognizes that among the attractions of the sport are risks, inherent and otherwise. The state has a legitimate interest in:

(1) maintaining the economic viability of the snowmobiling industry by discouraging claims based on damages resulting from risks inherent in the sport;

(2) clarifying what the inherent risks of snowmobiling are; and

(3) establishing the duties of snowmobilers and snowmobile area operators.

History: En. Sec. 1, Ch. 440, L. 1987; amd. Sec. 1, Ch. 145, L. 1999.

Cross-References
Liability for negligence as well as willful acts, 27-1-701.

23-2-652. Repealed. Sec. 7, Ch. 416, L. 2015.
History: **En. Sec. 2, Ch. 440, L. 1987; amd. Sec. 2, Ch. 145, L. 1999.**

23-2-653. Snowmobile area operators — duties. (1) Consistent with the duty of reasonable care owed by a snowmobile area operator to a snowmobiler, the person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

(2) The snowmobile area operator owes a duty of reasonable care, as required by 27-1-701, to a snowmobiler except for the risks inherent in the sport of snowmobiling.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the risks inherent in the sport of snowmobiling.
History: **En. Sec. 3, Ch. 440, L. 1987; amd. Sec. 3, Ch. 145, L. 1999.**

23-2-654. Snowmobiler's assumption of responsibility — duties. (1) A snowmobiler shall operate a snowmobile at all times in a manner that avoids injury to self and others and must be aware of the inherent risks in the sport of snowmobiling.

(2) A snowmobiler shall:

(a) know the range of the snowmobiler's ability and snowmobile safely within the limits of that ability and the snowmobiler's equipment so as to negotiate any section of terrain or snowmobile trail safely and without injury or damage. A snowmobiler must be aware that the snowmobiler's ability may vary because of terrain or trail changes caused by weather, grooming changes, or snowmobile use.

(b) maintain control of speed and course at all times while snowmobiling so as to prevent injury to self and others;

(c) heed all posted warnings; and

(d) refrain from acting in a manner that may cause or contribute to the injury of anyone.

(3) A snowmobiler shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling. Risks inherent in the sport of snowmobiling are:

(a) variations in terrain, including surface or subsurface snow or ice conditions naturally occurring or resulting from weather changes, snowmobile use, or grooming or snowmaking operations;

(b) bare spots or thin snow cover caused by limited snowfall, melting, wind erosion, snowmobile action, grooming, or unconsolidated base;

(c) rocks, trees, or other forms of forest growth or debris;

(d) clearly visible or plainly marked improvements or trail maintenance equipment; and

(e) avalanches.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile.
History: **En. Sec. 4, Ch. 440, L. 1987; amd. Sec. 11, Ch. 351, L. 1993; amd. Sec. 4, Ch. 145, L. 1999.**

23-2-655. Maintenance of rental snowmobiles. A person who engages in the business of renting snowmobiles to another shall:

(1) maintain rental snowmobiles in a safe condition; and

(2) offer each renter instructions in the mechanical operation of the rental snowmobile.
History: **En. Sec. 5, Ch. 440, L. 1987.**

23-2-656. Repealed. Sec. 5, Ch. 145, L. 1999.
History: **En. Sec. 6, Ch. 440, L. 1987.**

23-2-657. Environmental review compliance — exemption. (1) Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to this part; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to this part or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award.

History: En. Sec. 1, Ch. 157, L. 2011; amd. Sec. 6, Ch. 416, L. 2015.

Part 7

Passenger Ropeways — Ski Areas

23-2-701. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 19, Ch. 124, L. 1977; R.C.M. 1947, 69-6601; amd. Sec. 3, Ch. 483, L. 1989.

23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Freestyle terrain" means terrain parks and terrain features, including but not limited to jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle bump terrain, and any other constructed features.

(2) "Inherent dangers and risks of skiing" means those dangers or conditions that are part of the sport of skiing, including:

(a) changing weather conditions;

(b) snow conditions as they exist or as they may change, including ice, hardpack, powder, packed powder, wind pack, corn snow, crust, slush, cut-up snow, and machine-made snow of any depth or accumulation, including but not limited to any depth or accumulation around or near trees or snowmaking equipment;

(c) avalanches, except on open, machine-groomed ski trails;

(d) collisions with natural surface or subsurface conditions, such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(e) collisions with lift towers, signs, posts, fences, enclosures, hydrants, water pipes, or other artificial structures and their components;

(f) variations in steepness or terrain, whether natural or the result of slope design, snowmaking, or snow grooming operations, including but not limited to roads, freestyle terrain, ski jumps, catwalks, and other terrain modifications;

(g) collisions with clearly visible or plainly marked equipment, including but not limited to lift equipment, snowmaking equipment, snow grooming equipment, trail maintenance equipment, and snowmobiles, whether or not the equipment is moving;

(h) collisions with other skiers;

(i) the failure of a skier to ski within that skier's ability;

(j) skiing in a closed area or skiing outside the ski area boundary as designated on the ski area trail map; and

(k) restricted visibility caused by snow, wind, fog, sun, or darkness.

(3) "Passenger" means any person who is being transported or conveyed by a passenger ropeway.

(4) "Passenger ropeway" means a device used to transport passengers by means of an aerial tramway or lift, surface lift, surface conveyor, or surface tow.

(5) "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski slopes and trails and improvements.

(6) "Ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for skiing.

(7) "Skier" means a person who is using any ski area facility for the purpose of skiing, including but not limited to ski slopes and trails.

(8) "Skiing" means any activity, including participation in or practice or training for competitions or special events, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other sliding device.

History: En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973; R.C.M. 1947, 69-6602; amd. Sec. 1, Ch. 90, L. 1987; amd. Sec. 4, Ch. 483, L. 1989; amd. Sec. 1, Ch. 346, L. 1997; amd. Sec. 1, Ch. 315, L. 2007; amd. Sec. 1, Ch. 59, L. 2015.

23-2-703. Ropeways not common carriers or public utilities. Passenger ropeways may not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971; amd. Sec. 21, Ch. 124, L. 1977; R.C.M. 1947, 69-6615; amd. Sec. 2, Ch. 315, L. 2007.

23-2-704. Unlawful to endanger life or cause damage. (1) It is unlawful for a passenger riding or using a passenger ropeway to endanger the life and safety of other persons or cause damage to passenger ropeway equipment.

(2) A person who purposely or knowingly violates this section is guilty of a misdemeanor.

History: En. Secs. 16, 17, Ch. 436, L. 1971; R.C.M. 1947, 69-6616, 69-6617; amd. Sec. 3, Ch. 315, L. 2007.

Cross-References

Misdemeanor penalty when not otherwise specified, 46-18-212.

23-2-705. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 2, Ch. 483, L. 1989.

23-2-706 through 23-2-710 reserved.

23-2-711. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 5, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6605; amd. Sec. 5, Ch. 483, L. 1989.

23-2-712. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 6, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6606; amd. Sec. 6, Ch. 483, L. 1989.

23-2-713. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 7, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6607; amd. Sec. 7, Ch. 483, L. 1989.

23-2-714. Repealed. Sec. 4, Ch. 346, L. 1997.

History: (1)En. Sec. 8, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; Sec. 69-6608, R.C.M. 1947; (2)En. Sec. 9, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 2, Ch. 437, L. 1977; Sec. 69-6609, R.C.M. 1947; R.C.M. 1947, 69-6608, 69-6609; amd. Sec. 1, Ch. 188, L. 1985; amd. Sec. 8, Ch. 483, L. 1989.

23-2-715. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. 69-6608.1 by Sec. 1, Ch. 437, L. 1977; R.C.M. 1947, 69-6608.1; amd. Sec. 2, Ch. 188, L. 1985; amd. Sec. 2, Ch. 90, L. 1987; amd. Sec. 9, Ch. 483, L. 1989; amd. Sec. 1, Ch. 34, L. 1991.

23-2-716. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 10, Ch. 676, L. 1991; amd. Sec. 41, Ch. 10, L. 1993.

23-2-717. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 13, Ch. 676, L. 1991; amd. Sec. 42, Ch. 10, L. 1993.

23-2-718. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 14, Ch. 676, L. 1991; amd. Sec. 43, Ch. 10, L. 1993.

23-2-719 and 23-2-720 reserved.

23-2-721. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 10, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 20, Ch. 124, L. 1977; R.C.M. 1947, 69-6610; amd. Sec. 10, Ch. 483, L. 1989.

23-2-722. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611; amd. Sec. 11, Ch. 483, L. 1989.

23-2-723. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612; amd. Sec. 12, Ch. 483, L. 1989.

23-2-724. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613; amd. Sec. 13, Ch. 483, L. 1989.

23-2-725. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614; amd. Sec. 14, Ch. 483, L. 1989.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. The legislature finds that skiing is a major recreational sport and a major industry in the state and recognizes that among the attractions of the sport are the inherent dangers and risks of skiing. The state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from the inherent dangers and risks of skiing, defining the inherent dangers and risks of skiing, and establishing the duties of skiers and ski area operators.

History: En. Sec. 1, Ch. 509, L. 1979; amd. Sec. 1, Ch. 429, L. 1989; amd. Sec. 4, Ch. 315, L. 2007.

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-732. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 2, Ch. 509, L. 1979; amd. Sec. 2, Ch. 429, L. 1989.

23-2-733. Duties of operator regarding ski areas. (1) Consistent with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

(a) mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(b) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;

(c) maintain one or more trail boards at prominent locations at each ski area displaying a map of that area's network of ski slopes and trails, the boundaries of the ski area, and the relative degree of difficulty of the ski slopes and trails at that area;

(d) post a notice requiring the use of ski-retention devices;

(e) designate at the start of each day, by trail board or otherwise, which ski slopes and trails are open or closed and amend those designations as openings and closures occur during the day;

(f) post in a conspicuous location the current skier responsibility code that is published by the national ski areas association;

(g) post a copy of 23-2-736 in a conspicuous location; and

(h) mark designated freestyle terrain with a symbol recognized by the national ski areas association.

(2) Nothing in this part may be construed to impose any duty owed by a ski area operator to a trespasser or an unauthorized user of a ski area.

History: En. Sec. 3, Ch. 509, L. 1979; amd. Sec. 3, Ch. 429, L. 1989; amd. Sec. 1, Ch. 140, L. 1995; amd. Sec. 5, Ch. 315, L. 2007.

23-2-734. Duties of operator with respect to passenger ropeways. A ski area operator shall construct, operate, maintain, and repair any passenger ropeway. An operator has the duty of taking responsible actions to properly construct, operate, maintain, and repair a passenger ropeway in accordance with current standards.

History: En. Sec. 4, Ch. 509, L. 1979; amd. Sec. 3, Ch. 90, L. 1987; amd. Sec. 15, Ch. 483, L. 1989; amd. Sec. 2, Ch. 346, L. 1997; amd. Sec. 6, Ch. 315, L. 2007.

23-2-735. Duties of passenger. A passenger may not:

(1) board or disembark from a passenger ropeway except at an area designated for those purposes;

(2) throw or expel any object from a passenger ropeway;

(3) interfere with the running or operation of a passenger ropeway;

(4) use a passenger ropeway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger ropeway without the authority of the operator.

History: En. Sec. 5, Ch. 509, L. 1979; amd. Sec. 7, Ch. 315, L. 2007.

23-2-736. Duties of skier. (1) A skier has the duty to ski at all times in a manner that avoids injury to the skier and others and to be aware of the inherent dangers and risks of skiing.

(2) A skier:

(a) shall know the range of the skier's ability and safely ski within the limits of that ability and the skier's equipment so as to negotiate any section of terrain or ski slope and trail safely and without injury or damage. A skier shall know that the skier's ability may vary because of ski slope and trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to the skier or others;

(c) shall abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is posted as provided in 23-2-733;

(d) shall obey all posted or other warnings and instructions of the ski area operator; and

(e) shall read the ski area trail map and must be aware of its contents.

(3) A person may not:

(a) place an object in the ski area or on the uphill track of a passenger ropeway that may cause a passenger or skier to fall;

(b) cross the track of a passenger ropeway except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident without:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when the person knows that a person involved in the accident is in need of medical or other assistance.

(4) A skier shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from inherent dangers and risks of skiing. Nothing in this part may be construed to limit a skier's right to hold another skier legally accountable for damages caused by the other skier.

History: En. Sec. 6, Ch. 509, L. 1979; amd. Sec. 4, Ch. 429, L. 1989; amd. Sec. 126, Ch. 42, L. 1997; amd. Sec. 8, Ch. 315, L. 2007.

Cross-References

Comparative negligence, 27-1-702.

23-2-737. Repealed. Sec. 5, Ch. 429, L. 1989.

History: En. Sec. 7, Ch. 509, L. 1979.

Part 8
Off-Highway Vehicles

Part Cross-References

Off-road operation of off-highway vehicle in state park or fishing access site prohibited, 23-1-128.

Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions, 61-8-371.

23-2-801. Definition. (1) As used in this part, "off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(2) Off-highway vehicle does not include:

(a) vehicles designed primarily for travel on, over, or in the water;

(b) snowmobiles; or

(c) except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands.

History: En. Sec. 1, Ch. 578, L. 1987; amd. Sec. 1, Ch. 599, L. 1989; amd. Sec. 33, Ch. 477, L. 2003.

23-2-802. Exemptions. The provisions of this part do not apply to:

(1) an off-highway vehicle owned or used by the United States or another state or an agency or political subdivision of the United States or another state;

(2) an off-highway vehicle registered in an adjacent state of the United States if:

(a) that state does not require payment of a fee to use off-highway vehicles registered in Montana in that state; and

(b) the off-highway vehicle is temporarily used within this state for not more than 30 days; or

(3) a licensed motorcycle or licensed quadricycle used for fishing and hiking access, camping, or picnicking on a visible two-track trail or road within 1 mile of a designated road.

History: En. Sec. 2, Ch. 578, L. 1987; amd. Sec. 1, Ch. 423, L. 1991; amd. Sec. 1, Ch. 409, L. 2015.

23-2-803. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 3, Ch. 578, L. 1987; amd. Secs. 1, 3, Ch. 433, L. 1989; amd. Sec. 5, Ch. 599, L. 1989; amd. Sec. 3, Ch. 402, L. 1997; amd. Sec. 137, Ch. 574, L. 2001; amd. Sec. 22, Ch. 592, L. 2003.

23-2-804. Decal required. (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by a person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid:

(a) the registration fee provided for in 61-3-321(5); or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321(8), as evidenced by presentation of an owner's certificate of registration and payment receipt. The county treasurer may confirm the registration status of a motorcycle or quadricycle by examining the current registration receipt for the vehicle or checking the electronic record of title for the vehicle.

(2) The decal must be serially numbered.

History: En. Sec. 4, Ch. 578, L. 1987; amd. Secs. 7, 16, Ch. 599, L. 1989; amd. Sec. 2, Ch. 423, L. 1991; amd. Sec. 20, Ch. 257, L. 2001; amd. Sec. 138, Ch. 574, L. 2001; amd. Sec. 34, Ch. 477, L. 2003; amd. Sec. 23, Ch. 592, L. 2003; amd. Sec. 34, Ch. 542, L. 2005.

23-2-805. Repealed. Sec. 13, Ch. 599, L. 1989.

History: En. Sec. 5, Ch. 578, L. 1987.

23-2-806. Enforcement. (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the fish and wildlife commission; and

(c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of their duties.

History: En. Sec. 6, Ch. 578, L. 1987; amd. Sec. 9, Ch. 599, L. 1989; amd. Sec. 8, Ch. 662, L. 1991.

23-2-807. Penalty — disposition. (1) The failure to display a valid decal indicating that the fee in lieu of tax, registration fees, decal fees, and, when applicable, taxes on licensed vehicles have been paid on the off-highway vehicle, as provided in 23-2-804, is a misdemeanor punishable by a fine of $50.

(2) All fines collected under this section must be transmitted to the department of revenue for deposit in the state general fund.

History: En. Sec. 7, Ch. 578, L. 1987; amd. Sec. 35, Ch. 83, L. 1989; amd. Sec. 10, Ch. 599, L. 1989; amd. Sec. 42, Ch. 509, L. 1995; amd. Sec. 21, Ch. 257, L. 2001; amd. Sec. 24, Ch. 592, L. 2003.

23-2-808. Regulation by local government precluded. No political subdivision may prescribe further licensing or registration of off-highway vehicles, and no political subdivision may levy fees or charges for use or operation of off-highway vehicles within the subdivision.

History: En. Sec. 9, Ch. 578, L. 1987.

23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of $5 to the county treasurer, who shall forward the fee to the state, as provided in 15-1-504, for deposit in the state general fund.

History: En. Sec. 8, Ch. 599, L. 1989; amd. Sec. 67, Ch. 114, L. 2003; amd. Sec. 25, Ch. 592, L. 2003; amd. Sec. 35, Ch. 542, L. 2005.

23-2-810. Repealed. Sec. 81, Ch. 477, L. 2003; Sec. 46, Ch. 592, L. 2003.

History: En. Sec. 11, Ch. 604, L. 1991.

23-2-811. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 2, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 463, L. 1991; amd. Sec. 3, Ch. 482, L. 1993; amd. Sec. 139, Ch. 574, L. 2001.

23-2-812. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 3, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 4, Ch. 482, L. 1993; amd. Sec. 140, Ch. 574, L. 2001.

23-2-813. Repealed. Sec. 81, Ch. 477, L. 2003.

History: En. Sec. 4, Ch. 599, L. 1989.

23-2-814. Nonresident temporary-use permits — use of fees. (1) Except as provided in 23-2-802, an off-highway vehicle that is owned by a nonresident may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and on forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent street address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) The applicant's name and permanent street address, as required in subsection (2)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

(c) Upon submission of the application and a fee of $35, of which $2 is a search and rescue surcharge, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of title may not be issued.

(5) (a) Except as provided in subsection (5)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(i) $27.50 must be expended to maintain off-highway vehicle trails;

(ii) $2.50 must be used by the department for enforcement of off-highway vehicle laws pursuant to 23-2-806;

(iii) $2 must be remitted to the license agent who sold the nonresident temporary-use permit; and

(iv) $1 must be used by the department to mitigate and eradicate noxious weeds along off-highway vehicle trails.

(b) The $2 search and rescue surcharge must be deposited in the account established in 10-3-801 for use as provided in that section.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of $60. All fines collected under this section must be transmitted to the department of revenue for deposit of $40 of each $60 fine in the state general fund and $20 of each $60 fine in the summer motorized recreation trail account provided for in 23-2-112.

History: En. Sec. 1, Ch. 247, L. 1993; amd. Sec. 22, Ch. 257, L. 2001; amd. Sec. 141, Ch. 574, L. 2001; amd. Sec. 35, Ch. 477, L. 2003; amd. Sec. 2, Ch. 409, L. 2015; amd. Sec. 10, Ch. 353, L. 2019; amd. Sec. 5, Ch. 605, L. 2023.

23-2-815 and 23-2-816 reserved.

23-2-817. Repealed. Sec. 240, Ch. 542, L. 2005.

History: En. Sec. 6, Ch. 599, L. 1989; amd Sec. 14, Ch. 398, L. 1989; amd. Sec. 36, Ch. 477, L. 2003; amd. Sec. 26, Ch. 592, L. 2003.

23-2-818. Repealed. Sec. 59, Ch. 329, L. 2007.

History: En. Sec. 12, Ch. 599, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 3, Ch. 384, L. 1999; amd. Sec. 142, Ch. 574, L. 2001; amd. Sec. 37, Ch. 477, L. 2003; amd. Sec. 36, Ch. 542, L. 2005; amd. Sec. 27, Ch. 596, L. 2005.

23-2-819 and 23-2-820 reserved.

23-2-821. Off-highway crossings of public roads — use of certain forest development roads. (1) Except as provided in subsection (2), an off-highway vehicle may make a direct crossing of a public road when the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The off-highway vehicle must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(2) An off-highway vehicle may not be operated on or across an interstate highway as defined in 60-1-103.

(3) An off-highway vehicle may be operated on or across a forest development road in this state, as defined in 61-8-110, if the road has been designated and approved for off-highway vehicle use by the United States forest service.

History: En. Sec. 1, Ch. 578, L. 1993; amd. Sec. 1, Ch. 95, L. 1999; amd. Sec. 3, Ch. 299, L. 2019.

23-2-822. Off-highway vehicle operator responsibilities. (1) An off-highway vehicle operator shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of off-highway vehicle use and shall regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of off-highway vehicle operation is avoided.

(2) Risks inherent in the sport of off-highway operation include variations in terrain, surface or subsurface conditions, crevices, ravines, streams, poor visibility, rocks, trees, other forms of forest growth or debris, and any other natural hazard.

(3) An off-highway vehicle operator is responsible for:

(a) knowing the range of the operator's ability to navigate any slope, trail, or area for off-highway vehicle use within the limits of the operator's ability, taking into consideration the conditions;

(b) maintaining control of speed and course at all times while operating the off-highway vehicle;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of off-highway equipment or products or safety equipment used incidental to the operation of an off-highway vehicle.

History: En. Sec. 2, Ch. 578, L. 1993.

23-2-823. Void. Sec. 6, Ch. 578, L. 1993.

History: En. Sec. 3, Ch. 578, L. 1993; amd. Sec. 43, Ch. 509, L. 1995.

23-2-824. Operation on public roads, streets, and highways. (1) A person may operate an off-highway vehicle on a controlled-access highway or facility only if the vehicle is registered and licensed under 61-3-301 and the operator possesses a license to drive the vehicle issued under Title 61, chapter 5.

(2) Off-highway vehicle operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only if:

(a) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(b) operation is authorized on municipal streets by municipal ordinance.

(3) (a) Except as provided in subsection (3)(b), an off-highway vehicle may not be operated as allowed under subsection (2) unless it is equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless it is equipped with a suitable braking device operable by either hand or foot.

(b) A motorcycle or quadricycle that is not subject to the provisions of Title 61, chapter 9, is exempt from the requirements in subsection (3)(a).

(4) (a) Except as provided in subsection (4)(b), a person who operates an off-highway vehicle when allowed under subsection (2) must have in the person's possession a license to drive a motor vehicle issued under Title 61, chapter 5.

(b) An operator is exempt from the requirement to possess a license when operating an off-highway vehicle as allowed under subsection (2) if the person:

(i) is under 16 years of age but at least 12 years of age;

(ii) at the time of operation of the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license to drive a motor vehicle; and

(iii) is operating a motorcycle or quadricycle that is not subject to the provisions of Title 61, chapter 9.

(5) A person under 12 years of age may operate a motorcycle or quadricycle on unpaved roads or highways if the person is accompanied by an adult and the motorcycle or quadricycle is operated in a reasonable and prudent manner. The provisions of 61-9-417 apply to the operation of a motorcycle or quadricycle under this subsection.

History: En. Sec. 1, Ch. 106, L. 2011; amd. Sec. 1, Ch. 434, L. 2017.

23-2-825. Off-highway vehicle grant program. (1) Money deposited in the off-highway vehicle account pursuant to 60-3-201 must be used by the department of fish, wildlife, and parks to administer an off-highway vehicle grant program to develop and maintain facilities open to the general public, to repair areas that are impacted or damaged by off-highway vehicles, and to promote off-highway vehicle safety.

(2) Ten percent of the money deposited in the account must be granted for the promotion of off-highway vehicle safety.

(3) Ten percent of the money deposited in the account may be used to repair areas that are impacted or damaged by off-highway vehicles.

(4) The department may require an applicant to provide a 10% match in cash or donated services to be eligible to receive a grant.

(5) After awarding a grant pursuant to this section, the department shall, on request of the grantee, make an initial distribution of 50% of the funding to the entity receiving the award, a distribution of 40% on receipt by the department of expense receipts, and a distribution of the final 10% of the funding on receipt by the department of proof of completion of the project for which the money is awarded.

(6) Entities may use grant funds to acquire various hand tools and chain saws needed to accomplish trail maintenance. The grantee shall provide to the department on request an itemized list and receipts for all purchases of hand tools and chain saws made using grant funds.

(7) Entities receiving a grant may use up to 7% of the funds for administrative costs.

History: En. Sec. 1, Ch. 177, L. 2019; amd. Sec. 1, Ch. 254, L. 2023.

Part 9
Cave Conservation Act

23-2-901. Short title. This part may be cited as "The Montana Cave Conservation Act".

History: En. Sec. 1, Ch. 264, L. 1993.

23-2-902. Definitions. As used in this part, the following definitions apply:

(1) "Cave" means any geologically formed void or cavity beneath the surface of the earth or within a cliff or ledge, including but not limited to natural subsurface water and drainage systems, whether or not a natural entrance is present. The term does not include a mine, tunnel, aqueduct, or human-made excavation but does include any natural structure that is commonly known as a cavern, sinkhole, pit, grotto, or rock shelter and that communicates with a subterranean passage or drainage system.

(2) "Cave life" means any life form that occurs in, uses, visits, or inhabits a cave.

(3) "Gate" means a structure or device located to limit or prohibit access or entry to a cave.

(4) "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains.

(5) "Owner" means any person or public or private agency that has the right to possession of a cave.

(6) "Person" means an individual, partnership, firm, association, trust, corporation, or other legal entity.

(7) "Speleogen" means the surrounding natural earth or bedrock in which a cave is formed, including but not limited to clastic sediments, walls, floors, ceiling, and other related structural and geological features.

(8) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including but not limited to formations known as stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair, soda straw, drapery, bacon, cave pearl, popcorn, rimstone dam, column, palette, and flowstone. A speleothem is commonly composed of calcite, gypsum, epsomite, aragonite, celestite, or other similar mineral.

History: **En. Sec. 2, Ch. 264, L. 1993.**

23-2-903. Vandalism of cave unlawful. (1) Except as provided in subsection (2), a person may not purposely or knowingly:

(a) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(b) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(c) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this part; or

(d) disturb or alter in any way the natural condition of a cave.

(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave.

History: **En. Sec. 3, Ch. 264, L. 1993.**

Cross-References

Criminal mischief, 45-6-101.

23-2-904. Disturbance of cave life unlawful. A person may not purposely or knowingly remove, kill, harm, or otherwise interfere with cave life, except for health or safety reasons or when the act is a minimal disturbance or for removal of organisms for recognized scientific inquiry. Gates at the entrance or at any point within a cave must be of open construction to allow unimpeded passage of air, insects, bats, and other cave life.

History: **En. Sec. 4, Ch. 264, L. 1993.**

23-2-905. Pollution of and burning harmful substances in cave unlawful. (1) A person may not purposely or knowingly store, dump, litter, dispose of, or otherwise place in a cave any refuse, garbage, dead animal, sewage, or toxic substance harmful to cave life or human life.

(2) A person may not burn in a cave any substance that produces smoke or gas that is or may be harmful to cave life. The use of a carbide lamp that produces acetylene gas is permitted.

History: **En. Sec. 5, Ch. 264, L. 1993.**

23-2-906. Sale of speleothems and speleogens unlawful. A person may not sell, offer for sale, or export for sale any speleothem or speleogen.

History: **En. Sec. 6, Ch. 264, L. 1993.**

23-2-907. Conditions of owner liability. The liability of the owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is restricted pursuant to 70-16-302.

History: **En. Sec. 7, Ch. 264, L. 1993.**

23-2-908. Penalty. A person convicted of violating any provision of this part is subject to a fine of not less than $500 or more than $2,000, imprisonment in the county jail for not more than 60 days, or both.

History: **En. Sec. 9, Ch. 264, L. 1993.**

CHAPTER 3
ATHLETICS — BOXING
(Repealed)

Part 1 — State Board of Athletics (Repealed)

Part 2 — Boxing, Sparring, and Wrestling Matches (Repealed)

Part 3 — General (Repealed)

Part 4 — Professional Boxing Events (Repealed)

Part 5 — Licenses (Repealed)

Part 6 — Reporting Requirements — Penalties (Repealed)

Part 1
State Board of Athletics
(Repealed)

23-3-101. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. 82-301.1 by Sec. 346, Ch. 350, L. 1974; R.C.M. 1947, 82-301.1.

23-3-102. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R.C.M. 1921; amd. Sec. 1, Ch. 103, L. 1927; re-en. Sec. 4551, R.C.M. 1935; amd. Sec. 345, Ch. 350, L. 1974; amd. Sec. 19, Ch. 453, L. 1977; R.C.M. 1947, 82-301; amd. Sec. 5, Ch. 474, L. 1981.

23-3-103. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1927; re-en. Sec. 4552, R.C.M. 1935; amd. Sec. 36, Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974; R.C.M. 1947, 82-302.

Part 2
Boxing, Sparring, and Wrestling Matches
(Repealed)

23-3-201. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R.C.M. 1921; amd. Sec. 3, Ch. 103, L. 1927; re-en. Sec. 4554, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974; amd. Sec. 1, Ch. 5, L. 1977; R.C.M. 1947, 82-303.

23-3-202. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R.C.M. 1921; amd. Sec. 4, Ch. 103, L. 1927; re-en. Sec. 4555, R.C.M. 1935; R.C.M. 1947, 82-304.

23-3-203. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R.C.M. 1921; amd. Sec. 5, Ch. 103, L. 1927; re-en. Sec. 4556, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974; R.C.M. 1947, 82-305.

23-3-204. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R.C.M. 1921; amd. Sec. 6, Ch. 103, L. 1927; re-en. Sec. 4557, R.C.M. 1935; amd. Sec. 350, Ch. 350, L. 1974; R.C.M. 1947, 82-306.

23-3-205. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4558, R.C.M. 1921; amd. Sec. 7, Ch. 103, L. 1927; re-en. Sec. 4558, R.C.M. 1935; R.C.M. 1947, 82-307.

23-3-206. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R.C.M. 1921; amd. Sec. 8, Ch. 103, L. 1927; re-en. Sec. 4559, R.C.M. 1935; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974; amd. Sec. 1, Ch. 217, L. 1975; R.C.M. 1947, 82-308.

23-3-207. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R.C.M. 1921; amd. Sec. 9, Ch. 103, L. 1927; re-en. Sec. 4560, R.C.M. 1935; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974; amd. Sec. 2, Ch. 217, L. 1975; R.C.M. 1947, 82-309.

23-3-208. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R.C.M. 1921; amd. Sec. 10, Ch. 103, L. 1927; re-en. Sec. 4561, R.C.M. 1935; amd. Sec. 353, Ch. 350, L. 1974; R.C.M. 1947, 82-310.

23-3-209. Repealed. Sec. 1, Ch. 322, L. 1981.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4562, R.C.M. 1921; amd. Sec. 11, Ch. 103, L. 1927; re-en. Sec. 4562, R.C.M. 1935; R.C.M. 1947, 82-311.

Part 3
General
(Repealed)

23-3-301. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 2, Ch. 506, L. 1983; amd. Sec. 55, Ch. 483, L. 2001; amd. Sec. 8, Ch. 11, L. 2007; amd. Sec. 1, Ch. 378, L. 2009.

Part 4
Professional Boxing Events
(Repealed)

23-3-401. Repealed. Sec. 24, Ch. 11, L. 2007.

History: En. Sec. 3, Ch. 506, L. 1983; amd. Sec. 2, Ch. 11, L. 1993; amd. Sec. 5, Ch. 492, L. 2001.

23-3-402. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 4, Ch. 506, L. 1983; amd. Sec. 9, Ch. 11, L. 2007; amd. Sec. 2, Ch. 378, L. 2009; amd. Sec. 1, Ch. 437, L. 2015.

23-3-403. Repealed. Sec. 24, Ch. 11, L. 2007.

History: En. Sec. 5, Ch. 506, L. 1983; amd. Sec. 1, Ch. 97, L. 1985.

23-3-404. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 6, Ch. 506, L. 1983; amd. Sec. 2, Ch. 97, L. 1985; amd. Sec. 10, Ch. 11, L. 2007; amd. Sec. 3, Ch. 378, L. 2009; amd. Sec. 2, Ch. 437, L. 2015.

23-3-405. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 7, Ch. 506, L. 1983; amd. Sec. 3, Ch. 97, L. 1985; amd. Sec. 1, Ch. 375, L. 2003; amd. Sec. 1, Ch. 375, L. 2003; amd. Sec. 1, Ch. 202, L. 2005; amd. Sec. 33, Ch. 519, L. 2005; amd. Sec. 11, Ch. 11, L. 2007; amd. Sec. 4, Ch. 378, L. 2009; amd. Sec. 3, Ch. 437, L. 2015.

Part 5
Licenses
(Repealed)

23-3-501. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 8, Ch. 506, L. 1983; amd. Sec. 2, Ch. 492, L. 1997; amd. Sec. 2, Ch. 375, L. 2003; amd. Sec. 1, Ch. 467, L. 2005; amd. Sec. 12, Ch. 11, L. 2007; amd. Sec. 10, Ch. 109, L. 2009; amd. Sec. 5, Ch. 378, L. 2009; amd. Sec. 4, Ch. 437, L. 2015.

23-3-502. Repealed. Sec. 6, Ch. 437, L. 2015.

History: En. Sec. 9, Ch. 506, L. 1983; amd. Sec. 13, Ch. 11, L. 2007; amd. Sec. 6, Ch. 378, L. 2009.

23-3-503. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 5, Ch. 437, L. 2015.

Part 6
Reporting Requirements — Penalties (Repealed)

23-3-601. Repealed. Sec. 6, Ch. 437, L. 2015.

History: En. Sec. 10, Ch. 506, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 11, L. 2007; amd. Sec. 7, Ch. 378, L. 2009.

23-3-602. Repealed. Sec. 6, Ch. 437, L. 2015.

History: En. Sec. 11, Ch. 506, L. 1983; amd. Sec. 15, Ch. 11, L. 2007; amd. Sec. 8, Ch. 378, L. 2009.

23-3-603. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 12, Ch. 506, L. 1983; amd. Sec. 16, Ch. 11, L. 2007; amd. Sec. 9, Ch. 378, L. 2009.

23-3-604 through 23-3-610 reserved.

23-3-611. Repealed. Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 13, Ch. 506, L. 1983.

CHAPTER 4
HORSERACING

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Chapter Cross-References

Board of Horseracing created, 2-15-1809.
Local government — power to regulate gambling, 7-1-112, 23-5-171, 23-5-307, 23-5-408, 23-5-413, 23-5-620.
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Cruelty to animals — animal race longer than 2 miles, 45-8-211.

Part 1
Administration

23-4-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) "Advance deposit wagering hub operator" means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races

that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) "Board" means the board of horseracing provided for in 2-15-1809.

(4) "Board of stewards" means a board composed of three stewards who supervise race meets.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Fantasy sports league" has the meaning provided in 23-5-801.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

(9) "Minor" means a person under 18 years of age.

(10) "Montana wager" means a parimutuel wager that is placed at a race track in Montana or on a race being conducted in Montana or any parimutuel wager placed by a Montana resident on a race conducted outside of Montana.

(11) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(12) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

(13) "Persons" means individuals, firms, corporations, fair boards, and associations.

(14) (a) "Race meet" means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(15) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(16) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(17) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(18) "Simulcast parimutuel network" means an association that has contracted with the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races or has been licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. The board may act as a simulcast parimutuel network provider with respect to simulcast races.

(19) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(20) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(21) "Wild horse ride" means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner.

History: En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974; R.C.M. 1947, 62-502; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 563, L. 1983; amd. Sec. 1, Ch. 192, L. 1989; amd. Sec. 1, Ch. 557, L. 1989; amd. Sec. 1, Ch. 207, L. 1995; amd. Sec. 1, Ch. 18, L. 1997; amd. Sec. 56, Ch. 483, L. 2001; amd. Sec. 1, Ch. 9, L. 2007; amd. Sec. 1, Ch. 379, L. 2007; amd. Sec. 1, Ch. 387, L. 2007; amd. Sec. 1, Ch. 294, L. 2011; amd. Sec. 1, Ch. 402, L. 2013; amd. Sec. 1, Ch. 382, L. 2015; amd. Sec. 2, Ch. 232, L. 2019.

23-4-102. Presiding officer — quorum — costs — salary. (1) The board shall organize by electing one of its members as presiding officer. Four members of the board constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid $50 for each day in which the member is actually and necessarily engaged in the performance of board duties and must be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the member's official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974; amd. Sec. 9, Ch. 453, L. 1977; R.C.M. 1947, 62-503; amd. Sec. 1, Ch. 214, L. 1989; amd. Sec. 2, Ch. 18, L. 1997.

23-4-103. Department's report — public record. (1) The department shall keep detailed records of board meetings, of the business transacted at the meetings, and licenses applied for and issued.

(2) Records of the board kept by the department are public records subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974; R.C.M. 1947, 62-504.

23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards that must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;

(11) setting license fees commensurate with the cost of issuing a license;

(12) the time, conduct, and supervision of simulcast races and fantasy sports leagues and parimutuel betting on simulcast races and fantasy sports leagues;

(13) licensing, approval, and regulation of simulcast facilities; and

(14) licensing, approval, and regulation of match bronc rides and wild horse rides.

History: En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; R.C.M. 1947, 62-505(part); amd. Sec. 5, Ch. 563, L. 1983; amd. Sec. 2, Ch. 192, L. 1989; amd. Sec. 2, Ch. 557, L. 1989; amd. Sec. 2, Ch. 9, L. 2007; amd. Sec. 2, Ch. 387, L. 2007.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Licensing of veterinarians, Title 37, ch. 18.

23-4-105. Authority of board. (1) The board shall license and regulate racing, match bronc rides, and wild horse rides and review race meets held in this state under this chapter. All percentages withheld from amounts wagered, amounts set aside pursuant to 23-4-202(4)(d), percentages collected pursuant to 23-4-204(3), percentages collected pursuant to 23-4-302(3) and (5)(b), and money collected pursuant to 23-4-304(1)(a) and (1)(b) must be deposited in a state special revenue account and are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), 23-4-302(3) and (5)(b), and 23-4-304(1)(a) and (1)(b) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana, the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry.

(2) Funds retained by the board in a state special revenue fund pursuant to 23-4-302(1) and (4) are statutorily appropriated to the board as provided in 17-7-502 for the operation of a simulcast parimutuel network and for other purposes that the board considers appropriate for the good of the existing horseracing industry.

History: En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974; R.C.M. 1947, 62-506; amd. Sec. 6, Ch. 563, L. 1983; amd. Sec. 3, Ch. 192, L. 1989; amd. Sec. 3, Ch. 557, L. 1989; amd. Sec. 3, Ch. 18, L. 1997; amd. Sec. 2, Ch. 314, L. 2005; amd. Sec. 2, Ch. 467, L. 2005; amd. Sec. 3, Ch. 9, L. 2007; amd. Sec. 4, Ch. 426, L. 2009; amd. Sec. 2, Ch. 294, L. 2011; amd. Sec. 1, Ch. 113, L. 2017; amd. Sec. 2, Ch. 567, L. 2021; amd. Sec. 1, Ch. 697, L. 2023.

23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities. (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and the provisions of Title 2, chapter 2, and this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities;

(d) prescribe the duties and salary of state stewards; and

(e) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist in the performance of the executive secretary's duties.

(4) The executive secretary, a staff member, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse or mule running on a Montana track or having any financial interest in any Montana racing association. A racing official hired by the department or approved by the board may not wager at a race meet at which the racing official presides.

History: En. Sec. 7, Ch. 563, L. 1983; amd. Sec. 4, Ch. 192, L. 1989; amd. Sec. 1, Ch. 447, L. 1991; amd. Sec. 4, Ch. 18, L. 1997; amd. Sec. 1, Ch. 2, L. 2017.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 5.

23-4-107 through 23-4-109 reserved.

23-4-110. Terminated. Sec. 5, Ch. 232, L. 2019.

History: En. Sec. 1, Ch. 232, L. 2019.

Part 2
Race Meets

23-4-201. Licenses — contracts. (1) (a) A person may not hold a race meet or conduct fantasy sports league wagering through a parimutuel facility, parimutuel network, or a simulcast parimutuel network conducting a fantasy sports league in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(b) A person may not conduct simulcast racing through a simulcast parimutuel network without having entered into a contract with the board.

(2) A person who participates in a race meet, except for a match bronc ride or a wild horse ride, must be licensed and charged an annual fee set by the board. The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may submit a contract proposal to the board to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

(8) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5.

History: (1), (3) thru (5)En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974; Sec. 62-507, R.C.M. 1947; (2)En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; Sec. 62-505, R.C.M. 1947; R.C.M. 1947, 62-505(part), 62-507; amd. Sec. 8, Ch. 563, L. 1983; amd. Sec. 4, Ch. 557, L. 1989; amd. Sec. 3, Ch. 467, L. 2005; amd. Sec. 4, Ch. 9, L. 2007; amd. Sec. 3, Ch. 387, L. 2007; amd. Sec. 3, Ch. 294, L. 2011.

23-4-202. Penalty for violations of law — authority of board — judicial review. (1) (a) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, except a participant in a match bronc ride or a wild horse ride, without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(c) A person conducting simulcast racing through a simulcast parimutuel network without having entered into a contract with the board is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account. The board shall then distribute all funds collected under this subsection (4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities;

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races;

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities;

(k) conduct and supervision of match bronc rides and wild horse rides; and

(l) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part); amd. Sec. 9, Ch. 563, L. 1983; amd. Sec. 5, Ch. 557, L. 1989; amd. Sec. 44, Ch. 509, L. 1995; amd. Sec. 5, Ch. 18, L. 1997; amd. Sec. 3, Ch. 314, L. 2005; amd. Sec. 5, Ch. 9, L. 2007; amd. Sec. 2, Ch. 379, L. 2007; amd. Sec. 4, Ch. 387, L. 2007; amd. Sec. 5, Ch. 426, L. 2009; amd. Sec. 4, Ch. 294, L. 2011.

Cross-References

Administrative rules, contested cases, and judicial review, Title 2, ch. 4.

23-4-203. Race meets — when lawful. It is lawful to conduct live or simulcast race meets at a racetrack or simulcast facility or otherwise at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part); amd. Sec. 6, Ch. 557, L. 1989.

23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet must be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for the race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead. Races with exclusively Montana-bred horses must be run for 20% higher purses than races in comparable conditions that are not run with exclusively Montana-bred horses.

(2) The licensee conducting the race meet shall pay a sum equal to 10% of the first money of every purse won by a horse bred in this state to the breeder of the horse within 30 days of the end of the race meet. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) Three percent of exotic wagering on a simulcast race must be deposited in a state special revenue account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

History: En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974; amd. Sec. 2, Ch. 306, L. 1977; R.C.M. 1947, 62-509; amd. Sec. 10, Ch. 563, L. 1983; amd. Sec. 7, Ch. 557, L. 1989; amd. Sec. 6, Ch. 18, L. 1997; amd. Sec. 4, Ch. 314, L. 2005; amd. Sec. 6, Ch. 426, L. 2009.

23-4-205. Public liability insurance. For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet or operate a simulcast facility under this chapter shall carry public liability insurance in an amount and form of contract approved by the board.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974; R.C.M. 1947, 62-510; amd. Sec. 8, Ch. 557, L. 1989.

Cross-References

Liability insurance, Title 33, ch. 23, 24.

Part 3
Parimutuel Betting

Part Cross-References

Gambling — when authorized, Art. III, sec. 9, Mont. Const.; 23-5-151.

23-4-301. Parimutuel betting — other betting illegal — penalty. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of the parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing. All money must be distributed on a percentage, based on each track's percent, of the total annual on-track parimutuel handle.

(7) The board may license an advance deposit wagering hub operator to conduct advance deposit wagering. Advance deposit wagering is prohibited and illegal unless it is conducted through an advance deposit wagering hub operator licensed by the board. A licensed advance deposit wagering hub operator:

(a) may accept advance deposit wagering money for races conducted by a licensed race meet;

(b) may not accept a wager in an amount in excess of the money on deposit in the account of a person who wishes to make the wager;

(c) may not allow a person under 18 years of age to open an account with the advance deposit wagering hub operator, make a wager from an account, or otherwise have access to an account;

(d) shall include a statement in any of its advertising for advance deposit wagering that a person under 18 years of age is not allowed to participate;

(e) shall verify the identification, residence, and age of each person seeking to open an advance deposit wagering account;

(f) shall agree to pay to the board a source market fee in an amount equal to a percentage, as set forth in its license agreement, of the total amount wagered by Montana residents from their accounts with the advance deposit wagering hub operator; and

(g) shall agree to a payment schedule of source market fees as set forth in its license agreement.

(8) (a) It is unlawful for a person or organization to accept a Montana wager without being licensed by the state of Montana as provided in this chapter.

(b) A violation of subsection (8)(a) is an illegal gambling enterprise, as defined in 23-5-112, and is punishable as provided by law.

(9) It is unlawful to:

(a) conduct pool selling or bookmaking or to wager on a fantasy sports league other than by the parimutuel system and by being physically present at the licensed parimutuel facility;

(b) permit a minor to use the parimutuel system; or

(c) conduct internet or telephone wagering on fantasy sports leagues.

History: En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974; R.C.M. 1947, 62-511; amd. Sec. 11, Ch. 563, L. 1983; amd. Sec. 1, Ch. 221, L. 1987; amd. Sec. 9, Ch. 557, L. 1989; amd. Sec. 1, Ch. 516, L. 1991; amd. Sec. 1, Ch. 449, L. 1993; amd. Sec. 3, Ch. 379, L. 2007; amd. Sec. 5, Ch. 387, L. 2007; amd. Sec. 2, Ch. 382, L. 2015.

23-4-302. Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's state special revenue account.

(b) The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year may, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.

(5) (a) The parimutuel network licensee conducting fantasy sports league wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool less the takeout amount of not more than 30% of the total deposits.

(b) The takeout amount must be distributed according to the yearly license agreement between the parimutuel facility licensee, the parimutuel network licensee, and the board. No more than 10% of the amount collected under this subsection (5)(b) may be appropriated by the legislature for administration of this chapter. The remaining portion collected under this subsection (5)(b) must be deposited in a state special revenue account. The board shall then distribute this portion to live race purses and for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The odd cents of all redistribution based on each dollar deposited that exceeds a sum equal to the next lowest multiple of 10, known as "breakage", as well as unclaimed winning tickets from each parimutuel pool, must be distributed by the board to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

History: En. Sec. 12, Ch. 196, L. 1965; R.C.M. 1947, 62-512; amd. Sec. 12, Ch. 563, L. 1983; amd. Sec. 10, Ch. 557, L. 1989; amd. Sec. 2, Ch. 516, L. 1991; amd. Sec. 7, Ch. 18, L. 1997; amd. Sec. 5, Ch. 314, L. 2005; amd. Sec. 4, Ch. 379, L. 2007; amd. Sec. 6, Ch. 387, L. 2007; amd. Sec. 7, Ch. 426, L. 2009; amd. Sec. 2, Ch. 113, L. 2017; amd. Sec. 1, Ch. 115, L. 2021.

23-4-303. Licensee's right to withhold deposits. Subject to 15-10-420, if a government or governmental agency imposes a levy on a licensee by a special tax on the money deposited under the parimutuel system or upon or against a licensee's receipts, the licensee may withhold in addition to the percent and breakage provided for in 23-4-302 the amount of the tax levied.

History: En. Sec. 13, Ch. 196, L. 1965; R.C.M. 1947, 62-513; amd. Sec. 125, Ch. 584, L. 1999.

23-4-304. Gross receipts — department's percentage — collection and allocation. (1) (a) Each live race meet licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(c) The licensed parimutuel network conducting fantasy sports league wagering shall pay the funds distributed pursuant to 23-4-302(5)(b) to the department within 10 days after receipt of the money by the licensee.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through a state special revenue account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974; R.C.M. 1947, 62-514; amd. Sec. 13, Ch. 563, L. 1983; amd. Sec. 5, Ch. 192, L. 1989; amd. Sec. 11, Ch. 557, L. 1989; amd. Sec. 8, Ch. 18, L. 1997; amd. Sec. 6, Ch. 314, L. 2005; amd. Sec. 7, Ch. 387, L. 2007; amd. Sec. 8, Ch. 426, L. 2009; amd. Sec. 3, Ch. 113, L. 2017.

23-4-305. Deposit of unclaimed money. Each licensee holding a race meet shall, within 30 days of the end of the meet, report to the board the total face value of all unclaimed winning tickets from each parimutuel pool. The money from unclaimed winning tickets must be retained by the licensee for capital improvement approved by the board.

History: En. 62-515 by Sec. 1, Ch. 199, L. 1974; R.C.M. 1947, 62-515; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 563, L. 1983.

CHAPTER 5
GAMBLING

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Chapter Cross-References
Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.; 23-5-151.

Part 1
General Provisions, Proceedings, and Penalties

Part Cross-References
Local government — power to regulate gambling, 7-1-112, 23-5-171, 23-5-307, 23-5-408, 23-5-413, 23-5-620.
Bingo, keno, and raffles authorized, 23-5-405.
Amusement games, Title 23, ch. 6, part 1.
Loitering near illegal gambling — basis for discipline of highway patrol officer, 44-1-612.

23-5-101. Renumbered 23-5-112. Code Commissioner, 1989.

23-5-102. Renumbered 23-5-151. Code Commissioner, 1989.

23-5-103. Renumbered 23-5-152. Code Commissioner, 1989.

23-5-104. Renumbered 23-5-153. Code Commissioner, 1989.

23-5-105. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R.C.M. 1947; redes. 94-8-431 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 508, L. 1977; R.C.M. 1947, 94-8-431.

23-5-106. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R.C.M. 1921; re-en. Sec. 11162, R.C.M. 1935; Sec. 94-2406, R.C.M. 1947; redes. 94-8-406 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-406; amd. Sec. 7, Ch. 198, L. 1981.

23-5-107. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R.C.M. 1921; Cal. Pen. C. Sec. 332; re-en. Sec. 11161, R.C.M. 1935; Sec. 94-2405, R.C.M. 1947; redes. 94-8-405 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 70, Ch. 359, L. 1977; R.C.M. 1947, 94-8-405.

23-5-108. Renumbered 23-5-154. Code Commissioner, 1989.

23-5-109. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R.C.M. 1921; re-en. Sec. 11164, R.C.M. 1935; Sec. 94-2408, R.C.M. 1947; redes. 94-8-408 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-408.

23-5-110. Public policy of state concerning gambling. (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 8 of this chapter is a privilege revocable only for good cause. A holder does not acquire

a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry.

History: En. Sec. 1, Ch. 642, L. 1989; amd. Sec. 1, Ch. 398, L. 1993.

23-5-111. Construction and application. In view of Article III, section 9, of the Montana constitution, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by those parts.

History: (1)En. Sec. 65, Ch. 642, L. 1989; (2)En. Sec. 2, Ch. 642, L. 1989; amd. Sec. 2, Ch. 398, L. 1993.

23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Antique gambling device" means:

(a) an illegal gambling device manufactured prior to 1994; or

(b) any gambling device which, at any present time, is 30 years old or older.

(2) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(3) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(4) "Associated gambling business" means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

(5) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(6) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(7) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(8) "Bingo session" means all activities incidental to a series of bingo games conducted by a licensed operator beginning when the first bingo ball is drawn in the first game of bingo.

(9) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(10) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(11) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(12) "Department" means the department of justice.

(13) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, route operator, or operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed manufacturer, distributor, route operator, or operator.

(14) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in:

(i) promotional games of chance;

(ii) amusement games regulated by Title 23, chapter 6, part 1;

(iii) social card games of bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist played solely for prizes of minimal value, as defined by department rule; or

(iv) patron dice games as defined in this section.

(15) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(16) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(17) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance;

(iii) an amusement game regulated under Title 23, chapter 6;

(iv) a savings promotion raffle offered by a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law and conducted in compliance with 23-5-413 that entitles individual members or depositors equal chances to win a designated prize by depositing a sum of money during a specified savings period; or

(v) an entry into a raffle as a result of paying membership dues or making a purchase of an item offered during a fundraising event held by a nonprofit organization.

(18) "Gross proceeds" means gross revenue received less prizes paid out.

(19) "Heads or tails" means a gambling activity in which players attempt to predict the outcome of a coin toss. Those who are incorrect are eliminated and those who are correct continue to another round until one winning player remains and is awarded a prize.

(20) "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

(21) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, under part 5 of this chapter, in a bingo game approved by the department under part 4 of this chapter, or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

(22) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) dice games known as craps, hazard, or chuck-a-luck, but not including patron dice games or activities authorized by 23-5-160;

(c) credit gambling, except as provided in 23-5-413; and

(d) internet gambling.

(23) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) (i) The term includes online casinos, by whatever name known, which constitute internet gambling and therefore are prohibited. This includes but is not limited to any platform, website, or application that knowingly transmits or receives gambling information, allows consumers to place a bet or wager using any form of currency, and makes payouts of any form of currency.

(ii) Online casinos that do not allow the use of currency of any kind are not considered a gambling activity and therefore are permitted.

(c) The term does not include:

(i) the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, the state lottery provided for in Title 23, chapter 7, or a raffle authorized under Title 23, chapter 5, part 4, that is sponsored by a nonprofit organization and that is registered with the department. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(ii) a raffle conducted under 23-5-413 by a nonprofit organization, college, university, or school district in which a participant pays for a raffle ticket with a credit card.

(24) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(25) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(26) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(27) "Licensee" means a person who has received a license from the department.

(28) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(29) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(30) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator;

(b) possesses gambling devices or components of gambling devices for the purpose of testing them; or

(c) purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or repair to sell to licensed manufacturers, distributors, route operators, or operators.

(31) "Nonprofit organization" means an organization established as a nonprofit to support charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organizations' charitable activities, scholarships or educational grants, or community service projects.

(32) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(33) "Ownership" or "ownership interest" means the ability to:

(a) share in the profits, losses, or liabilities of a gambling operation;

(b) enjoy the privileges reserved to licensees; or

(c) control a gambling operation.

(34) (a) "Patron dice games" means dice games involving wagers played by two or more patrons over 18 years of age on the premises of a licensed gambling operator that the licensee does not promote and in which the licensee does not participate or acquire a financial interest either as the bank of the game or as the source of credit for players.

(b) The term does not include:

(i) an illegal gambling enterprise as defined in this section; or

(ii) activities authorized by 23-5-160.

(35) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(36) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(37) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(38) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(39) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(40) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(41) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises and may sell gambling equipment to a distributor or manufacturer.

(42) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(43) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element

of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(44) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department.

History: **En. Secs. 2, 3, Ch. 197, L. 1949; Secs. 94-2429, 94-2431, R.C.M. 1947; redes. 94-8-429, 94-8-430 by Sec. 29, Ch. 513, L. 1973; amd. Secs. 24, 25, Ch. 508, L. 1977; R.C.M. 1947, 94-8-429, 94-8-430; amd. Sec. 3, Ch. 642, L. 1989; Sec. 23-5-101, MCA 1987; redes. 23-5-112 by Code Commissioner, 1989; amd. Sec. 1, Ch. 473, L. 1991; amd. Sec. 8, Ch. 523, L. 1991; amd. Sec. 1, Ch. 647, L. 1991; amd. Sec. 3, Ch. 398, L. 1993; amd. Sec. 2, Ch. 626, L. 1993; amd. Sec. 78, Ch. 546, L. 1995; amd. Sec. 1, Ch. 13, L. 1997; amd. Sec. 1, Ch. 252, L. 1997; amd. Sec. 7, Ch. 134, L. 2005; amd. Sec. 1, Ch. 201, L. 2005; amd. Sec. 1, Ch. 101, L. 2007; amd. Sec. 5, Ch. 379, L. 2007; amd. Sec. 1, Ch. 429, L. 2007; amd. Sec. 1, Ch. 355, L. 2009; amd. Sec. 1, Ch. 66, L. 2011; amd. Sec. 1, Ch. 61, L. 2015; amd. Sec. 1, Ch. 276, L. 2017; amd. Sec. 2, Ch. 57, L. 2019; amd. Sec. 2, Ch. 284, L. 2019; amd. Sec. 1, Ch. 180, L. 2021; amd. Sec. 1, Ch. 259, L. 2021; amd. Sec. 1, Ch. 234, L. 2025; amd. Sec. 1, Ch. 626, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 234, L. 2025. Amendment effective June 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 626, L. 2025. Amendment effective October 1, 2025.

23-5-113. Department as criminal justice agency. The department is a criminal justice agency whose designated agents are granted peace officer status, with the power of search, seizure, and arrest. Agents are authorized to investigate gambling activities in this state regulated by parts 1 through 8 of this chapter and the rules of the department, to report violations to the county attorney of the county in which they occur, to investigate and report on activities related to liquor and tobacco administration under Title 16, and to act as appointed by the attorney general.

History: **En. Sec. 5, Ch. 642, L. 1989; amd. Sec. 2, Ch. 647, L. 1991; amd. Sec. 4, Ch. 398, L. 1993; amd. Sec. 8, Ch. 134, L. 2005; amd. Sec. 2, Ch. 61, L. 2015.**

23-5-114. Department employees — activities prohibited. (1) An employee of the department directly involved with the prosecution, investigation, regulation, or licensing of gambling, as designated by the attorney general, may not:

(a) serve as an officer of a business or organization that conducts a gambling activity, other than as an officer of a nonprofit organization;

(b) be employed by a licensed operator in any capacity that requires assisting in conducting a gambling activity regulated under parts 1 through 6 of this chapter or maintaining records for the gambling activity;

(c) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity; or

(d) participate in a gambling activity governed by parts 1 through 6 of this chapter, except in performing assigned employment duties. An employee may participate in a gambling activity governed by chapter 4 or 7 of this title.

(2) The prohibitions in subsections (1)(a) through (1)(c) apply to a former designated department employee during the first year following termination from employment with the department if the employee was directly involved with the prosecution, investigation, regulation, or licensing of gambling immediately before termination.

History: **En. Sec. 6, Ch. 642, L. 1989; amd. Sec. 26, Ch. 647, L. 1991.**

23-5-115. Powers and duties of department — licensing. (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications and may provide for the issuance of temporary operating authority.

(4) The department shall, as a prerequisite to the issuance of a license pursuant to the authority contained in this chapter, require the applicant to submit fingerprints for the purpose of a criminal background investigation by the department and the federal bureau of investigation.

(5) The applicant shall sign a release of information to the department and is responsible to the department for the payment of all fees associated with the criminal background check.

(6) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(7) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(8) The department may not make public or otherwise disclose confidential criminal justice information, as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

(9) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter.

History: En. Sec. 7, Ch. 642, L. 1989; amd. Sec. 3, Ch. 647, L. 1991; amd. Sec. 5, Ch. 398, L. 1993; amd. Sec. 3, Ch. 416, L. 1999; amd. Sec. 2, Ch. 355, L. 2009; amd. Sec. 3, Ch. 61, L. 2015.

23-5-116. Disclosure of information. (1) The department shall, upon request, disclose information concerning a current or former gambling license applicant or gambling licensee or any other person engaged in gambling or a gambling activity governed by parts 1 through 8 of this chapter, except:

(a) confidential criminal justice information, as defined in 44-5-103;

(b) personal information protected by an individual privacy interest;

(c) trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege; and

(d) information obtained in the tax reporting processes.

(2) Notwithstanding the limitations set forth in subsection (1), the department may disclose any information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency;

(b) the department of revenue and the federal internal revenue service; and

(c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general.

(3) In the event of a tax delinquency or at the request of a video gambling machine permitholder, the department shall inform the permitholder of the status of a licensed machine owner's tax payments for a video gambling machine located at the permitholder's place of business.

History: En. Sec. 4, Ch. 647, L. 1991; amd. Sec. 1, Ch. 132, L. 1995; amd. Sec. 1, Ch. 178, L. 1995; amd. Sec. 4, Ch. 416, L. 1999; amd. Sec. 3, Ch. 424, L. 1999.

23-5-117. Premises approval. (1) The department may approve a premises for issuance or operation of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

(2) The premises may include any concessioned area provided for in 16-4-418 and must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located;

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued; and

(d) be designed and arranged to allow for observation and control of all gambling activities by the gambling operator.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) The department may not provide additional requirements in rulemaking for premises suitability related to seating."

History: En. Sec. 7, Ch. 647, L. 1991; amd. Sec. 6, Ch. 398, L. 1993; amd. Sec. 2, Ch. 480, L. 1995; amd. Sec. 9, Ch. 479, L. 2019; amd. Sec. 10, Ch. 568, L. 2021.

23-5-118. Transfer of ownership interest — definitions. (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (4), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in the operation to a person other than another approved owner of an interest in the operation.

(3) An owner of an interest in a licensed gambling operation may transfer an ownership interest to another owner of an interest in the same licensed gambling operation without prior department approval subject to reporting requirements provided by department rules.

(4) This section does not apply to the transfer of a security interest in a licensed gambling operation under the requirements of subsection (5) or to the transfer of less than 5% of the interest in a publicly traded corporation.

(5) A regulated lender, as defined in 31-1-111, may obtain a security interest in the assets of a licensed gambling operation to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership interest in the licensee's business by a coborrower, guarantor, or other person who may directly or indirectly benefit from the pledge of the assets as collateral. As used in this subsection (5), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of a licensed gambling operation to:

(a) be coborrowers of a borrower's loan;

(b) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor;

(c) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan; or

(d) pledge the assets of a licensed gambling operation as additional collateral for a loan made by a regulated lender.

(6) When a licensee is the borrower, an owner of the licensee may make a payment on the institutional loan. If a payment is made under this subsection (6):

(a) the licensee must notify the department within 90 days that the payment was made and designate whether the payment will be treated as a loan or an equity investment as follows:

(i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which must be provided to the department; or

(ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result, the licensee must follow department requirements for disclosing changes in ownership percentages; and

(b) the funds used for the payment must be the party's own funds or funds borrowed from an institutional lender.

(7) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the coborrower or guarantor may make a payment on a licensee's institutional loan, and the payment does not create an undisclosed ownership in the licensee's business by the borrower, coborrower, or guarantor only if:

(a) the licensee notifies the department within 90 days that the payment was made;

(b) the payment is made as a loan that is memorialized by a written agreement; and

(c) the funds used for the payment are the coborrower's or guarantor's own funds or funds borrowed from an institutional lender.

(8) A regulated lender that obtains a security interest in the assets of a licensed gambling operation has no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (6) or (7) in connection with loan or guaranty payments it may receive from the coborrower or guarantor.

(9) For the purposes of subsections (6) and (7), the term "borrower" means the party that is primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid.

History: En. Sec. 8, Ch. 647, L. 1991; amd. Sec. 7, Ch. 398, L. 1993; amd. Sec. 2, Ch. 301, L. 2017; amd. Sec. 2, Ch. 259, L. 2021; amd. Sec. 2, Ch. 86, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 86, L. 2025. Amendment effective October 1, 2025.

23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant must own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July 1, 2007, pursuant to 16-4-204 is not eligible to offer gambling. Licenses issued under 16-4-201(8)(c) after May 8, 2025, may not offer gambling activities.

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises. Licenses issued under 16-4-105(1)(e) after May 8, 2025, may not offer gambling activities.

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(f). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(d) a retail beer and wine license issued under 16-4-109;

(e) a resort retail all-beverages license issued under 16-4-213; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-433 who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6.

(5) A license issued under a competitive bidding process as provided in 16-4-430 is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

History: En. Sec. 5, Ch. 465, L. 1997; amd. Sec. 1, Ch. 263, L. 1999; amd. Sec. 9, Ch. 110, L. 2003; amd. Sec. 2, Ch. 277, L. 2007; amd. Sec. 49, Ch. 2, L. 2009; amd. Sec. 15, Ch. 5, Sp. L. November 2017; amd. Sec. 11, Ch. 336, L. 2019; amd. Sec. 10, Ch. 342, L. 2019; amd. Sec. 6, Ch. 28, L. 2023; amd. Sec. 1, Ch. 501, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 501, L. 2025. Amendment effective May 8, 2025.

23-5-120 reserved.

23-5-121. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 115, L. 1907; Sec. 8423, Rev. C. 1907; re-en. Sec. 11166, R.C.M. 1921; re-en. Sec. 11166, R.C.M. 1935; Sec. 94-2410, R.C.M. 1947; redes. 94-8-410 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-410; amd. Sec. 3, Ch. 503, L. 1983.

23-5-122. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 9, Ch. 115, L. 1907; Sec. 8424, Rev. C. 1907; re-en. Sec. 11167, R.C.M. 1921; re-en. Sec. 11167, R.C.M. 1935; Sec. 94-2411, R.C.M. 1947; redes. 94-8-411 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 21, Ch. 508, L. 1977; R.C.M. 1947, 94-8-411.

23-5-123. Disposal of fines and penalties for violation of gambling laws. All fines and penalties collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 8 of this chapter or a rule of the department must be deposited in the operating budget of the department of justice.

History: En. Sec. 1, Ch. 25, L. 1933; re-en. Sec. 11167.1, R.C.M. 1935; Sec. 94-2412, R.C.M. 1947; redes. 94-8-412 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-412; amd. Sec. 9, Ch. 642, L. 1989; amd. Sec. 8, Ch. 398, L. 1993; amd. Sec. 10, Ch. 13, Sp. L. August 2002; amd. Sec. 9, Ch. 134, L. 2005; amd. Sec. 2, Ch. 626, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 626, L. 2025. Amendment effective October 1, 2025.

23-5-124. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 11, Ch. 115, L. 1907; Sec. 8426, Rev. C. 1907; re-en. Sec. 11169, R.C.M. 1921; re-en. Sec. 11169, R.C.M. 1935; Sec. 94-2414, R.C.M. 1947; redes. 94-8-414 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-414.

23-5-125. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 12, Ch. 115, L. 1907; Sec. 8427, Rev. C. 1907; re-en. Sec. 11170, R.C.M. 1921; re-en. Sec. 11170, R.C.M. 1935; Sec. 94-2415, R.C.M. 1947; redes. 94-8-415 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-415.

23-5-126. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 13, Ch. 115, L. 1907; Sec. 8428, Rev. C. 1907; re-en. Sec. 11171, R.C.M. 1921; re-en. Sec. 11171, R.C.M. 1935; Sec. 94-2416, R.C.M. 1947; redes. 94-8-416 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-416.

23-5-127. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 14, Ch. 115, L. 1907; Sec. 8429, Rev. C. 1907; re-en. Sec. 11172, R.C.M. 1921; Cal. Pen. C. Sec. 337; re-en. Sec. 11172, R.C.M. 1935; Sec. 94-2417, R.C.M. 1947; redes. 94-8-417 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-417.

23-5-128. Distributor's license — fees. (1) It is a misdemeanor for a person to conduct business as a distributor without first obtaining a distributor's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a distributor's license. The department shall retain the fee for administrative purposes.

(3) A distributor's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or route operator and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, route operator, or operator.

History: En. Sec. 14, Ch. 626, L. 1993.

23-5-129. Route operator's license — fees. (1) It is a misdemeanor for a person to conduct business as a route operator without first obtaining a route operator's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a route operator's license. The department shall retain the fee for administrative purposes.

(3) A route operator's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or distributor and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, distributor, or operator.

History: En. Sec. 15, Ch. 626, L. 1993.

23-5-130. Allowable compensation for route operator. The compensation that a licensed route operator may receive for leasing a video gambling machine to a licensed operator is limited to a set fee or a percentage of gross machine income, or both a set fee and percentage amount. The route operator may not assume responsibility for any expenses of the operator's business except for expenses associated with:

(1) paying video gambling machine permit fees and taxes;

(2) conducting video gambling machine promotional activities;

(3) maintaining and repairing video gambling machines;

(4) supplying funds to allow an operator to exchange a player's money for other coin or currency for operating a video gambling machine and to pay out prizes won by players;

(5) providing accounting and recordkeeping services for video gambling machines; and

(6) other activities, if allowed by department rule.

History: En. Sec. 16, Ch. 626, L. 1993.

23-5-131. Losses at illegal gambling may be recovered in civil action. A person, or the person's dependent or guardian, who, by playing or betting at an illegal gambling device or illegal gambling enterprise, loses money, property, or any other thing of value and pays and delivers it to another person connected with the operation or conduct of the illegal gambling device or illegal gambling enterprise, within 1 year following the person's loss, may:

(1) bring a civil action in a court of competent jurisdiction to recover the loss;

(2) recover the costs of the civil action and exemplary damages of no less than $500 and no more than $5,000; and

(3) join as a defendant any person having an interest in the illegal gambling device or illegal gambling enterprise.

History: En. Sec. 15, Ch. 115, L. 1907; Sec. 8430, Rev. C. 1907; re-en. Sec. 11173, R.C.M. 1921; re-en. Sec. 11173, R.C.M. 1935; Sec. 94-2418, R.C.M. 1947; redes. 94-8-418 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-418; amd. Sec. 13, Ch. 642, L. 1989; amd. Sec. 368, Ch. 56, L. 2009.

Cross-References

Exemplary damages allowed, 27-1-221.

Tort liability for willful acts, Title 27, ch. 1, part 7.

23-5-132. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 16, Ch. 115, L. 1907; Sec. 8431, Rev. C. 1907; re-en. Sec. 11174, R.C.M. 1921; re-en. Sec. 11174, R.C.M. 1935; Sec. 94-2419, R.C.M. 1947; redes. 94-8-419 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-419.

23-5-133. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 17, Ch. 115, L. 1907; Sec. 8432, Rev. C. 1907; re-en. Sec. 11175, R.C.M. 1921; re-en. Sec. 11175, R.C.M. 1935; Sec. 94-2420, R.C.M. 1947; redes. 94-8-420 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-420.

23-5-134. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).

23-5-135. Discharge of defendant. (1) A person against whom a civil action is brought, as provided in 23-5-131, may move to have the action against the person dismissed if the person has repaid to the person who suffered the loss or that person's dependent the gambling loss, the costs of bringing the civil action, and the exemplary damages agreed upon by the parties or assessed by the court.

(2) A civil action brought to recover gambling losses does not bar or interfere with another proceeding or action, whether criminal, civil, or administrative, that may be brought under the laws of the state.

History: En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part); amd. Sec. 14, Ch. 642, L. 1989; amd. Sec. 369, Ch. 56, L. 2009.

23-5-136. Injunction and other remedies. (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 8 of this chapter or a rule or order of the department, the department may:

(a) upon clear and convincing evidence, issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action.

History: En. Sec. 8, Ch. 642, L. 1989; amd. Sec. 27, Ch. 647, L. 1991; amd. Sec. 9, Ch. 398, L. 1993; amd. Sec. 3, Ch. 626, L. 1993; amd. Sec. 11, Ch. 13, Sp. L. August 2002.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Injunctions, Title 27, ch. 19.

23-5-137. Judicial review. (1) (a) A person aggrieved by a final order of the department may obtain a review of the order in district court by filing with the court, within 30 days after entry of the final order, a written petition requesting that the order be modified or set aside in whole or in part.

(b) A copy of the petition must be served upon the department at the same time. When the department receives the copy of the petition, it shall certify and file in court a copy of the filing, testimony, and other evidence upon which the final order was entered by the department. When these have been filed with the court, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the final order in whole or in part. A temporary cease and desist order from the department may remain in effect until a hearing has been held and a final order has been issued pursuant to 23-5-136.

(2) (a) The review must be conducted by the district court without a jury and must be confined to the record. In a case of alleged irregularity in procedure before the department not shown in the record, proof may be taken by the court. The court, upon request, shall hear oral argument and receive written briefs.

(b) The court may not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of a constitutional or statutory provision;

(ii) in excess of the statutory authority of the department;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(vii) inadequate because findings of fact, upon issues essential to the decision, were requested but not made.

(3) The commencement of proceedings under this section, unless specifically ordered by the court, may not operate as a stay of the department's final order.

History: **En. Sec. 12, Ch. 642, L. 1989.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

23-5-138. Evidence in administrative proceedings. When conducting an administrative proceeding under parts 1 through 8 of this chapter, the department may consider hearsay evidence approved by the hearing examiner in a prehearing conference at which a determination is made that the evidence possesses sufficient guaranties of trustworthiness and does not involve a question of the credibility of a witness or of the credibility of a witness's subjective observations or analysis.

History: **En. Sec. 4, Ch. 626, L. 1993.**

23-5-139 and 23-5-140 reserved.

23-5-141. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 20, Ch. 115, L. 1907; Sec. 8435, Rev. C. 1907; re-en. Sec. 11178, R.C.M. 1921; re-en. Sec. 11178, R.C.M. 1935; Sec. 94-2423, R.C.M. 1947; redes. 94-8-423 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-423.**

23-5-142. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 21, Ch. 115, L. 1907; Sec. 8436, Rev. C. 1907; re-en. Sec. 11179, R.C.M. 1921; re-en. Sec. 11179, R.C.M. 1935; Sec. 94-2424, R.C.M. 1947; redes. 94-8-424 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 23, Ch. 508, L. 1977; R.C.M. 1947, 94-8-424.**

23-5-143. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 19, Ch. 115, L. 1907; Sec. 8434, Rev. C. 1907; re-en. Sec. 11177, R.C.M. 1921; re-en. Sec. 11177, R.C.M. 1935; Sec. 94-2422, R.C.M. 1947; redes. 94-8-422 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 22, Ch. 508, L. 1977; R.C.M. 1947, 94-8-422.**

23-5-144. Repealed. Sec. 68, Ch. 642, L. 1989.

History: **En. Sec. 7, Ch. 115, L. 1907; re-en. Sec. 8422, Rev. C. 1907; re-en. Sec. 11165, R.C.M. 1921; re-en. Sec. 11165, R.C.M. 1935; Sec. 94-2409, R.C.M. 1947; redes. 94-8-409 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-409.**

23-5-145 through 23-5-150 reserved.

23-5-151. Gambling prohibited. Except as specifically authorized by statute, all forms of public gambling, lotteries, and gift enterprises are prohibited.

History: **En. Sec. 600, Pen. C. 1895; amd. Sec. 1, p. 80, L. 1897; amd. Secs. 1, 2 and 3, pp. 166, 167, L. 1901; amd. Sec. 1, Ch. 115, L. 1907; re-en. Sec. 8416, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1917; re-en. Sec. 11159, R.C.M. 1921; Cal. Pen. C. Sec. 330; re-en. Sec. 11159, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1937; Sec. 94-2401, R.C.M. 1947; redes. 94-8-401 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 508, L. 1977; R.C.M. 1947, 94-8-401; amd. Sec. 15, Ch. 642, L. 1989; Sec. 23-5-102, MCA 1987; redes. 23-5-151 by Code Commissioner, 1989.**

Cross-References

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.

Discipline of highway patrol officer for unauthorized presence where illegal gambling is conducted, 44-1-612.

23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions. (1) Except as provided in 23-5-153 and subsections (2) through (5) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person's possession or under the person's control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person's management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state.

(b) A person may not manufacture an illegal gambling device without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(5) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.

History: En. Sec. 2, Ch. 115, L. 1907; Sec. 8417, Rev. C. 1907; re-en. Sec. 11160, R.C.M. 1921; re-en. Sec. 11160, R.C.M. 1935; Sec. 94-2404, R.C.M. 1947; redes. 94-8-404 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 20, Ch. 508, L. 1977; R.C.M. 1947, 94-8-404; amd. Sec. 21, Ch. 642, L. 1989; Sec. 23-5-103, MCA 1987; redes. 23-5-152 by Code Commissioner, 1989; amd. Sec. 1, Ch. 211, L. 1991; amd. Sec. 5, Ch. 647, L. 1991; amd. Sec. 5, Ch. 626, L. 1993; amd. Sec. 1, Ch. 354, L. 1997; amd. Sec. 10, Ch. 134, L. 2005; amd. Sec. 2, Ch. 429, L. 2007; amd. Sec. 3, Ch. 57, L. 2019.

23-5-153. Possession and sale of antique gambling devices. (1) Subject to the requirements of subsection (4), a person may possess, sell, purchase, or transfer an antique gambling device. The person possessing the antique gambling device bears the burden of demonstrating that the device qualifies as an antique gambling device. Proof of qualification may be demonstrated by a date on an original, authentic manufacturer's serial number plate affixed to the gambling device or by other reliable documentation.

(2) An antique gambling device may be operated only in:

(a) a licensed gambling operation when authorized by law and permitted under part 6 of this chapter; or

(b) a private residential dwelling.

(3) (a) An antique gambling device may be possessed or located for purposes of display only and not for operation:

(i) in a public or private museum; or

(ii) in any other public place if the device is inaccessible to the public or is inoperable for purposes of conducting a gambling activity.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique gambling devices for purposes of commercially selling or otherwise supplying the devices.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique gambling devices in a 12-month period without first obtaining from the department a license for selling the antique gambling devices. The fee for the license is $50, and the license is valid for 3 years from the date that the license is issued. The fee must be retained by the department for administrative purposes.

History: **En. Sec. 1, Ch. 197, L. 1949; Sec. 94-2429, R.C.M. 1947; redes. 94-8-428 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-428; (2) thru (5) En. Sec. 1, Ch. 503, L. 1983; amd. Sec. 2, Ch. 503, L. 1983; amd. Sec. 1, Ch. 364, L. 1989; amd. Secs. 22, 73, Ch. 642, L. 1989; Sec. 23-5-104, MCA 1987; redes. 23-5-153 by Code Commissioner, 1989; amd. Sec. 28, Ch. 647, L. 1991; amd. Sec. 11, Ch. 134, L. 2005; amd. Sec. 3, Ch. 429, L. 2007; amd. Sec. 4, Ch. 57, L. 2019.**

Cross-References

Video draw poker and keno machines, Title 23, ch. 5, part 6.

23-5-154. Soliciting participation in illegal gambling activity prohibited. A person who purposely or knowingly advertises for or solicits another person to participate in an illegal gambling enterprise or use an illegal gambling device is guilty of a crime and is punishable under 23-5-161 and 23-5-162.

History: **En. Sec. 5, Ch. 115, L. 1907; Sec. 8420, Rev. C. 1907; re-en. Sec. 11163, R.C.M. 1921; Cal. Pen. C. Sec. 318; re-en. Sec. 11163, R.C.M. 1935; Sec. 94-2407, R.C.M. 1947; redes. 94-8-407 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-407; amd. Sec. 17, Ch. 642, L. 1989; Sec. 23-5-108, MCA 1987; redes. 23-5-154 by Code Commissioner, 1989; amd. Sec. 29, Ch. 647, L. 1991; amd. Sec. 3, Ch. 626, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 626, L. 2025. Amendment effective October 1, 2025.

Cross-References

Classification of offenses — definition of felony and misdemeanor, 45-1-201, 45-2-101.

23-5-155. Counterfeiting or defacing documents — penalty. (1) A person commits the offense of counterfeiting or defacing a document when the person purposely or knowingly counterfeits, alters, or wrongfully displays a seal, decal, license, identification number or device, or other document issued by the department.

(2) A person convicted of the offense of counterfeiting or defacing a document is guilty of a felony and must be punished in accordance with 23-5-162.

History: **En. Sec. 16, Ch. 642, L. 1989; amd. Sec. 370, Ch. 56, L. 2009.**

23-5-156. Offering or obtaining anything of value by fraud or operation of illegal gambling device or enterprise. (1) A person who in an activity involving gambling offers or obtains money, property, or anything of value that does not exceed $750 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who in an activity involving gambling offers or obtains money, property, or anything of value that exceeds $750 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162.

(3) A person who in an activity involving gambling offers or obtains money, property, or anything of value as part of a common scheme, as defined in 45-2-101, by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162.

History: **En. Sec. 18, Ch. 642, L. 1989; amd. Sec. 30, Ch. 647, L. 1991; amd. Sec. 2, Ch. 252, L. 1997.**

23-5-157. Gambling on cash basis — penalties. (1) (a) Except as provided in subsection (1)(b), in every gambling activity the consideration paid for the chance to play must be made in cash. A check or debit card may be used to obtain cash to participate in a gambling activity. A participant shall present the cash needed to play the game as the game is being played. If a check or debit card is used to obtain cash on the premises of a licensee then it must be delivered and accepted unconditionally. A licensee or employee of a licensee may not hold a check or other evidence of indebtedness for redemption pending the outcome of a gambling activity.

(b) The consideration for the chance to participate in Calcutta pools as provided in 23-5-222, raffles as provided in 23-5-413, casino nights as provided in 23-5-702, and card games normally scored using points as provided in Title 23, chapter 5, part 3, may be paid by cash, check, or debit card.

(c) Credit gambling is prohibited, except as provided in 23-5-413. Credit gambling is offering or accepting as part of the price of participation in a gambling activity or as payment of a debt incurred in a gambling activity:

(i) a check, credit card, or debit card held pending the outcome of a gambling activity;

(ii) a loan of any kind at any time from or on behalf of a licensee;

(iii) any form of deferred payment, including a note, IOU, post-dated check, hold check, or other evidence of indebtedness; or

(iv) a check issued or delivered that is accepted by the licensee with the knowledge that it will not be paid by the depository.

(2) A person who violates this section is guilty of a criminal offense under 23-5-156 and must be punished in accordance with 23-5-161 or 23-5-162.

History: En. Sec. 19, Ch. 642, L. 1989; amd. Sec. 10, Ch. 398, L. 1993; amd. Sec. 6, Ch. 626, L. 1993; amd. Sec. 3, Ch. 252, L. 1997; amd. Sec. 3, Ch. 355, L. 2009; amd. Sec. 1, Ch. 403, L. 2017; amd. Sec. 2, Ch. 234, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 234, L. 2025. Amendment effective June 1, 2025.

23-5-158. Minors not to participate — penalty — exception. (1) Except as provided in subsection (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished in accordance with 23-5-161.

(2) Except as provided in subsection (3), a person under 18 years of age may not purposely or knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil penalty not to exceed $50 if the proceedings for violating this subsection are held in justice's, municipal, or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth in need of intervention, as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects.

History: En. Sec. 20, Ch. 642, L. 1989; amd. Sec. 31, Ch. 647, L. 1991; amd. Sec. 7, Ch. 626, L. 1993; amd. Sec. 4, Ch. 550, L. 1997.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

23-5-159. Illegal sale, assignment, lease, or transfer of license — penalty. A licensee who purposely or knowingly sells, assigns, leases, or transfers a license or permit in violation of 23-5-110 is guilty of a misdemeanor punishable in accordance with 23-5-161.

History: En. Sec. 34, Ch. 647, L. 1991.

23-5-160. Shaking dice for drink or music or in shake-a-day game. (1) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to shake or choose one or more dice, alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall pay for the customer's drink or to determine whether the customer or the establishment shall immediately pay a predetermined amount of money, not to exceed $2, for music from a jukebox in the establishment.

(2) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to play the dice game commonly known as shake-a-day, in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll certain combinations simulating poker hands predetermined by the establishment. If one of the combinations is rolled, the customer may win merchandise or a portion or all of the money paid to play the game since the last winning combination was rolled.

The establishment may, before a game begins, set and post a percentage of the pot that will be set aside to start the pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings. An establishment may offer to the public more than one shake-a-day game at any given time.

History: **En. Sec. 1, Ch. 709, L. 1991; amd. Sec. 8, Ch. 626, L. 1993; amd. Sec. 1, Ch. 109, L. 2019; amd. Sec. 2, Ch. 180, L. 2021.**

23-5-161. Criminal liabilities — misdemeanor. A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter, the punishment of which is for a misdemeanor, shall upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person shall be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order.

History: **En. Sec. 23, Ch. 642, L. 1989; amd. Sec. 11, Ch. 398, L. 1993.**

23-5-162. Criminal liabilities — felony. (1) A person who purposely or knowingly violates a provision of parts 1 through 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 8 of this chapter and may not issue the person another license or permit under parts 1 through 8 of this chapter.

(3) A person who purposely or knowingly operates any type of illegal internet gambling site within the state's borders, including operating an online gambling site in the state through licensed or unlicensed offshore sources, is subject to felony criminal liabilities as provided under this section.

History: **En. Sec. 24, Ch. 642, L. 1989; amd. Sec. 32, Ch. 647, L. 1991; amd. Sec. 12, Ch. 398, L. 1993; amd. Sec. 4, Ch. 626, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 626, L. 2025. Amendment effective October 1, 2025.

23-5-163 reserved.

23-5-164. Payroll checks — promotional activities prohibited. A licensee may not offer financial incentives or conduct promotional games of chance in connection with an offer to cash payroll checks on the premises.

History: **En. Sec. 23, Ch. 626, L. 1993.**

23-5-165. Fishing derbies and wagering on natural occurrences. (1) The following are authorized gambling activities:

(a) a fishing derby in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise specified fish caught in a fishing event; and

(b) wagering on the outcome of a natural occurrence in which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatological or meteorological activity.

(2) Except as provided in subsection (3), all consideration paid to participate in a gambling activity authorized in subsection (1) must be paid to the winners.

(3) A nonprofit organization sponsoring a gambling activity authorized in subsection (1) may retain up to 50% of the total amount paid to participate.

(4) This section does not apply to a gambling activity conducted under chapter 4 or chapter 5, part 2 or 3, of this title.

History: **En. Sec. 55, Ch. 647, L. 1991.**

Cross-References

Fishing licenses, Title 87, ch. 2, part 3.

23-5-166 through 23-5-170 reserved.

23-5-171. Authority of local governments to regulate gambling. (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not restrict the number of licenses that the department may issue.

History: En. Sec. 4, Ch. 642, L. 1989; amd. Sec. 13, Ch. 398, L. 1993.

23-5-172. Prosecution. The county attorney of the county in which a violation of a provision of parts 1 through 8 of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state.

History: En. Sec. 25, Ch. 642, L. 1989; amd. Sec. 14, Ch. 398, L. 1993.

23-5-173 through 23-5-175 reserved.

23-5-176. Qualifications for licensure. (1) A person who the department determines is qualified to receive a license under the provisions of this chapter may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) Except as provided in subsection (4), the department shall issue a license unless the department can demonstrate that the applicant:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of gambling; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling;

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or

(c) is receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

(3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under this section.

(4) The department may deny a license or permit to an applicant who has falsified a license or permit application. If the falsification is determined after the license or permit has been issued, the department may revoke the license or permit.

History: En. Sec. 10, Ch. 642, L. 1989; amd. Sec. 33, Ch. 647, L. 1991.

23-5-177. Operator of gambling establishment — license — fee. (1) Except as provided in 23-5-310 and 23-5-410, it is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

(c) any other relevant information requested by the department; and

(d) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted. However, for applicants issued an alcoholic beverage license under 16-4-417, the department may approve the gambling operator license prior to approval of the premises. Gambling activities may not occur until the premises has been approved in accordance with 23-5-117.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued.

History: **En. Sec. 11, Ch. 642, L. 1989; amd. Sec. 4, Ch. 473, L. 1991; amd. Sec. 6, Ch. 647, L. 1991; amd. Sec. 10, Ch. 110, L. 2003; amd. Sec. 1, Ch. 82, L. 2013; amd. Sec. 10, Ch. 479, L. 2019.**

23-5-178. Associated gambling business. (1) The department may adopt rules for the licensing of associated gambling businesses, including but not limited to accounting software vendors and video gambling machine recyclers.

(2) The licensing of an associated gambling business may consider only the legality of the product being sold and the suitability of the owners of the business as provided in 23-5-176.

(3) The annual fee for an associated gambling business license is $100.

History: **En. Sec. 8, Ch. 355, L. 2009.**

23-5-179 reserved.

23-5-180. Property subject to forfeiture. (1) The following property is subject to forfeiture:

(a) gambling implements, apparatus, paraphernalia, slips, tickets, and devices kept, possessed, or used in violation of a provision of this chapter;

(b) personal property not listed in subsection (1)(a), including but not limited to motor vehicles and money or negotiable instruments, kept, possessed, derived from, or used in violation of a provision of this chapter.

(2) Personal property is not subject to forfeiture unless the owner of the property had actual or constructive knowledge of and was a consenting party to the illegal act.

History: **En. Sec. 1, Ch. 134, L. 2005.**

23-5-181. Petition — summons — service — answer. (1) A peace officer that seizes personal property under 23-5-180 shall within 45 days of the seizure file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurred. The clerk shall issue a summons, which the petitioning party shall by one of the following methods serve upon each owner or claimant of the personal property:

(a) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the department.

(2) Within 20 days after service under subsection (1), the owner or claimant of the seized property may file a verified answer to the allegations concerning the use of the property described in the petition. An extension of time for filing the answer may not be granted. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 2, Ch. 134, L. 2005.

23-5-182. Effect of failure to answer — hearing date following answer. (1) If a verified answer to the petition is not filed within 20 days after service under 23-5-181, the court, upon motion, shall order the property forfeited to the state.

(2) If a verified answer is filed within 20 days after service under 23-5-181, the forfeiture proceedings must be set for hearing without a jury, to be held no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service under 23-5-181.

History: En. Sec. 3, Ch. 134, L. 2005.

23-5-183. Rebuttable presumption of forfeiture — rebuttal of presumption. (1) There is a rebuttable presumption of forfeiture.

(2) An owner of the personal property who has a verified answer on file may rebut the presumption by proving that the property was not used for the purpose charged or that the use of the property occurred without the owner's knowledge or consent.

(3) A claimant of a security interest in the personal property who has a verified answer on file may preserve the security interest by proving that the security interest:

(a) is bona fide; and

(b) was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser of the personal property and without knowledge that the personal property was going to be or was used for the purpose charged.

(4) Subsection (3)(b) does not apply to:

(a) a person who has a lien for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage for or safekeeping of the personal property;

(b) a person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers; or

(c) a person regularly engaged in the business of selling or of purchasing conditional sales contracts for that type of personal property.

History: En. Sec. 4, Ch. 134, L. 2005.

23-5-184. Disposition of property. (1) If the court finds that the personal property was not used for the purpose charged or was used without the knowledge or consent of the owner, it shall order the property released to the owner.

(2) If the court finds that the personal property was used for the purpose charged and was used with the knowledge or consent of the owner, the personal property shall be disposed of as follows:

(a) If proper proof of a claim is presented at the hearing by the holder of a security interest, the court shall order the personal property released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the personal property as of the date of seizure. If the amount due the holder of the security interest is less than the value of the personal property, the personal property may be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution. The proceeds of the sale must first be used to pay the amount due to the holder of the security interest, with the remainder deposited in the account provided for in subsection

(3). Instead of sale at public auction, the law enforcement agency may turn the personal property over to the holder of the security interest. The personal property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If there is no security interest claimant and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so. If the personal property is not retained, it must be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution and the proceeds of the sale must be deposited in the account provided for in subsection (3).

(c) If a security interest claimant has presented proper proof of a claim and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) Any forfeited negotiable instruments must be liquidated to cash. All forfeited cash and the proceeds of liquidated negotiable instruments must be deposited in a state special revenue account to the credit of the department of justice. The department may expend the money deposited in the account only for purposes of enforcement of gambling laws.

(4) In making a disposition of personal property, the court may take any action to protect the rights of innocent persons.

History: En. Sec. 5, Ch. 134, L. 2005.

23-5-185. Pursuing violation by or determining suitability for licensure of person whose license has expired. The expiration of a license or permit issued under this chapter does not prevent the department from pursuing a violation by the person holding the license or permit or from determining that person's suitability for a future license or permit.

History: En. Sec. 6, Ch. 134, L. 2005.

Part 2
Calcutta Pools

23-5-201. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 580, Pen. C. 1895; re-en. Sec. 8406, Rev. C. 1907; re-en. Sec. 11149, R.C.M. 1921; Cal. Pen. C. Sec. 319; amd. Sec. 1, Ch. 36, L. 1935; re-en. Sec. 11149, R.C.M. 1935; Sec. 94-3001, R.C.M. 1947; redes. 94-8-301 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 17, Ch. 508, L. 1977; R.C.M. 1947, 94-8-301.

23-5-202. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 2, Ch. 36, L. 1935; re-en. Sec. 11149.1, R.C.M. 1935; Sec. 94-3002, R.C.M. 1947; redes. 94-8-302 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 18, Ch. 508, L. 1977; R.C.M. 1947, 94-8-302; amd. Sec. 21, Ch. 669, L. 1985.

23-5-203. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 581, Pen. C. 1895; re-en. Sec. 8407, Rev. C. 1907; re-en. Sec. 11150, R.C.M. 1921; re-en. Sec. 11150, R.C.M. 1935; Sec. 94-3003, R.C.M. 1947; redes. 94-8-303 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-303.

23-5-204. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 582, Pen. C. 1895; re-en. Sec. 8408, Rev. C. 1907; re-en. Sec. 11151, R.C.M. 1921; Cal. Pen. C. Sec. 321; re-en. Sec. 11151, R.C.M. 1935; Sec. 94-3004, R.C.M. 1947; redes. 94-8-304 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-304.

23-5-205. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 583, Pen. C. 1895; re-en. Sec. 8409, Rev. C. 1907; re-en. Sec. 11152, R.C.M. 1921; Cal. Pen. C. Sec. 322; re-en. Sec. 11152, R.C.M. 1935; Sec. 94-3005, R.C.M. 1947; redes. 94-8-305 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-305.

23-5-206. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 584, Pen. C. 1895; re-en. Sec. 8410, Rev. C. 1907; re-en. Sec. 11153, R.C.M. 1921; Cal. Pen. C. Sec. 323; re-en. Sec. 11153, R.C.M. 1935; Sec. 94-3006, R.C.M. 1947; redes. 94-8-306 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-306.

23-5-207. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 585, Pen. C. 1895; re-en. Sec. 8411, Rev. C. 1907; re-en. Sec. 11154, R.C.M. 1921; Cal. Pen. C. Sec. 324; re-en. Sec. 11154, R.C.M. 1935; Sec. 94-3007, R.C.M. 1947; redes. 94-8-307 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-307.

23-5-208. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 586, Pen. C. 1895; re-en. Sec. 8412, Rev. C. 1907; re-en. Sec. 11155, R.C.M. 1921; Cal. Pen. C. Sec. 325; re-en. Sec. 11155, R.C.M. 1935; Sec. 94-3008, R.C.M. 1947; redes. 94-8-308 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-308.

23-5-209. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 587, Pen. C. 1895; re-en. Sec. 8413, Rev. C. 1907; re-en. Sec. 11156, R.C.M. 1921; Cal. Pen. C. Sec. 326; re-en. Sec. 11156, R.C.M. 1935; Sec. 94-3009, R.C.M. 1947; redes. 94-8-309 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-309.

23-5-210. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 588, Pen. C. 1895; re-en. Sec. 8414, Rev. C. 1907; re-en. Sec. 11157, R.C.M. 1921; re-en. Sec. 11157, R.C.M. 1935; Sec. 94-3010, R.C.M. 1947; redes. 94-8-310 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-310.

23-5-211. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 589, Pen. C. 1895; re-en. Sec. 8415, Rev. C. 1907; re-en. Sec. 11158, R.C.M. 1921; re-en. Sec. 11158, R.C.M. 1935; Sec. 94-3011, R.C.M. 1947; redes. 94-8-311 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-311.

23-5-212 through 23-5-220 reserved.

23-5-221. Definition. As used in this part, "Calcutta pool" means a form of auction pool conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:

(1) a person's wager is equal to the person's bid;

(2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;

(3) the rules of the pool are publicly posted;

(4) no more than one wager for each competitor is allowed;

(5) at least 50% of the total pool is paid out in prizes;

(6) persons may not bid or wager money on any elementary school or high school sports event; and

(7) the underlying event has more than two entrants.

History: En. Sec. 1, Ch. 550, L. 1987; amd. Sec. 60, Ch. 642, L. 1989; Sec. 23-5-1101, MCA 1987; redes. 23-5-221 by Code Commissioner, 1989; amd. Sec. 371, Ch. 56, L. 2009.

23-5-222. Calcutta pools authorized. It is lawful to conduct or participate in a Calcutta pool as defined in 23-5-221. An organization shall apply to the department on a form prescribed and furnished by the department for a Calcutta permit. The application must be accompanied by a fee of $25, which the department shall retain for administrative purposes.

History: En. Sec. 2, Ch. 550, L. 1987; Sec. 23-5-1102, MCA 1987; redes. 23-5-222 by Code Commissioner, 1989; amd. Sec. 4, Ch. 61, L. 2015.

23-5-223. Penalty. A person who violates a provision of this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. Sec. 5, Ch. 550, L. 1987; amd. Sec. 61, Ch. 642, L. 1989; Sec. 23-5-1105, MCA 1987; redes. 23-5-223 by Code Commissioner, 1989.

23-5-224. Construction. Nothing in this part may be construed to permit a person to conduct a race meet or to bet on a race of a licensed race meet in violation of 23-4-201 and 23-4-301.

History: En. Sec. 6, Ch. 550, L. 1987; Sec. 23-5-1106, MCA 1987; redes. 23-5-224 by Code Commissioner, 1989.

Part 3
Card Games Act

23-5-301. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-701 by Sec. 1, Ch. 293, L. 1974; R.C.M. 1947, 62-701.

23-5-302. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-702 by Sec. 2, Ch. 293, L. 1974; R.C.M. 1947, 62-702.

23-5-303. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-714 by Sec. 14, Ch. 293, L. 1974; R.C.M. 1947, 62-714.

23-5-304 and 23-5-305 reserved.

23-5-306. Live card game table — permit — fees — disposition of fees. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) A permit is not required for social games played for prizes of minimal value, as defined by department rule.

(c) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

History: En. Sec. 29, Ch. 642, L. 1989; amd. Sec. 1, Ch. 18, Sp. L. January 1992; amd. Sec. 9, Ch. 626, L. 1993; amd. Sec. 8, Ch. 465, L. 1997; amd. Sec. 2, Ch. 101, L. 2007; amd. Sec. 5, Ch. 61, L. 2015.

23-5-307. Live card game tables — hours of play — restriction. Live card game tables must be closed for play between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: En. Sec. 32, Ch. 642, L. 1989.

23-5-308. Card game dealers — license. (1) Except as provided in 23-5-318, a person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall keep on the dealer's person and display upon request the dealer's license when working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that a temporary license:

(i) may be issued at a local department office or at another public location designated by the department; and

(ii) may only be issued upon the payment of the license application fee and submission of an application, required fingerprints, and proof that the applicant for a temporary license has a verifiable offer of employment from a licensed operator or card room contractor.

History: En. Sec. 28, Ch. 642, L. 1989; amd. Sec. 35, Ch. 647, L. 1991; amd. Sec. 2, Ch. 317, L. 1993; amd. Sec. 3, Ch. 101, L. 2007.

23-5-309. Requirements for conducting card games. (1) Except as provided in 23-5-310, 23-5-317, and 23-5-318, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) Except as provided in 23-5-318, a live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer.

History: En. Sec. 27, Ch. 642, L. 1989; amd. Sec. 36, Ch. 647, L. 1991; amd. Sec. 3, Ch. 317, L. 1993; amd. Sec. 15, Ch. 398, L. 1993.

23-5-310. Exemption from certain sections. A senior citizen center is exempt from 23-5-117, 23-5-177, 23-5-306, 23-5-308, and 23-5-309 if the center:

(1) limits participation in live card games to its members and members' guests;

(2) limits live card game activities to its main premises or place of operation; and

(3) does not operate live card games in a predominantly commercial manner.

History: En. Sec. 2, Ch. 473, L. 1991; amd. Sec. 2, Ch. 82, L. 2013.

23-5-311. Authorized card games. (1) The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo, and whist.

(2) A person may conduct or participate in a live card game or make a live card game table available for public play of a live card game only if it is specifically authorized by this part and described by department rules.

(3) This part does not apply to games simulated on electronic video gambling machines authorized under part 6 of this chapter.

History: En. 62-703 by Sec. 3, Ch. 293, L. 1974; R.C.M. 1947, 62-703; amd. Sec. 26, Ch. 642, L. 1989.

23-5-312. Prizes not to exceed $800. (1) A prize for an individual live card game may not exceed the value of $800. Games may not be combined in any manner so as to increase the value of the ultimate prize awarded. Except during a tournament conducted under 23-5-317, all prizes must be awarded immediately upon completion of each hand.

(2) If a licensed operator conducts a promotional game of chance involving a live card game, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance.

History: En. 62-704 by Sec. 4, Ch. 293, L. 1974; R.C.M. 1947, 62-704; amd. Sec. 31, Ch. 642, L. 1989; amd. Sec. 10, Ch. 626, L. 1993; amd. Sec. 1, Ch. 64, L. 2013.

23-5-313. Rules of play to be posted — rake-off approved. (1) A licensed operator shall prominently display the following information within the sight of the players at a live card game table:

(a) rules governing the conduct of each game;

(b) notice of the maximum percentage rake-off; and

(c) rules governing the prohibition of credit gambling.

(2) The department may adopt rules specifying the size, display, and content of rules as provided in this part and the manner of taking the rake-off. The rules must include notice of the maximum percentage rake-off, if any, and must require that the person taking the rake-off do so in an obvious manner.

History: En. 62-705 by Sec. 5, Ch. 293, L. 1974; R.C.M. 1947, 62-705; amd. Sec. 33, Ch. 642, L. 1989; amd. Sec. 4, Ch. 101, L. 2007.

23-5-314. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-706 by Sec. 6, Ch. 293, L. 1974; amd. Sec. 1, Ch. 508, L. 1977; R.C.M. 1947, 62-706.

23-5-315. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-709 by Sec. 9, Ch. 293, L. 1974; amd. Sec. 4, Ch. 508, L. 1977; R.C.M. 1947, 62-709.

23-5-316. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-710 by Sec. 10, Ch. 293, L. 1974; amd. Sec. 5, Ch. 508, L. 1977; R.C.M. 1947, 62-710.

23-5-317. Tournaments. (1) (a) A licensed operator who has a permit for placing at least one live card game table on the operator's premises may apply to the department for an annual large-stakes live card game tournament permit. A large-stakes tournament permit allows the operator to conduct up to 16 large-stakes tournaments a year on the operator's premises.

(b) The department shall charge an annual fee of $120 for a large-stakes tournament permit. The permit fee may not be prorated and must be retained by the department for administrative purposes.

(c) A large-stakes tournament may not be conducted for more than 5 consecutive days.

(d) The operator shall notify the department at least 5 days before the start of a large-stakes tournament. If a tournament will be conducted on the premises of more than one licensed operator, each operator shall notify the department at least 5 days before the start of the tournament. Except as provided in subsection (1)(f), each large-stakes tournament is counted toward each operator's annual 16-tournament limit.

(e) An operator issued a large-stakes tournament permit may participate with other large-stakes tournament permitholders to conduct a progressive large-stakes tournament in which the ultimate prize is not awarded until the final round of the tournament is completed.

(f) An operator issued a large-stakes tournament permit may conduct up to three charitable large-stakes tournaments a year that are not counted toward the operator's annual 16-tournament limit. The operator shall notify the department of the charitable tournament at least 5 days before the start of the tournament.

(g) An operator may charge an entry fee for a large-stakes tournament, which may include a fee to cover expenses incurred from conducting the tournament. The total amount paid by a participant to enter a large-stakes tournament, including any additional purchase of chips or other payment during the tournament, may not exceed $1,875. A participant in a large-stakes tournament who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if the tournament rules allow the participant to reenter the tournament.

(h) The prize for a large-stakes tournament may include the right to participate in another tournament if the value of a seat in the higher-level tournament equals the value of the expected top prize for the tournament.

(2) (a) A licensed operator who has a permit for placing at least one live card game table on the operator's premises may apply to the department for an annual small-stakes live card game tournament permit. A small-stakes tournament permit allows the operator to conduct daily small-stakes tournaments on the operator's premises.

(b) The department shall charge an annual fee of $500 for a small-stakes tournament permit. The permit fee may not be prorated and must be retained by the department for administrative purposes.

(c) An operator may charge an entry fee for a small-stakes tournament, which may include a fee to cover expenses incurred from conducting the tournament. The total amount paid by a participant to enter a small-stakes tournament may not exceed $80. A participant in a small-stakes tournament may not repurchase or add chips or reenter the tournament after elimination.

(d) A small-stakes tournament permitholder may place one additional live card table on the permitholder's premises, which may be used only for a small-stakes tournament. The tournament may be conducted on permitted card tables and the additional tournament card table.

(3) Tournament participants must be provided with a copy of the tournament rules before the start of a large-stakes or small-stakes tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(4) Permits for the placement of additional live card game tables as provided in 23-5-306 are not required for:

(a) additional tables authorized under a large-stakes tournament permit; or

(b) an additional small-stakes tournament table authorized under subsection (2)(d).

(5) A person must be present on the premises during a large-stakes or small-stakes tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a large-stakes or small-stakes poker or panguingue tournament.

(7) The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

(8) At least 50% of the total amount of the entrance fees for any large-stakes or small-stakes tournament that is represented as a charitable tournament must be paid to a charitable, educational, or recreational nonprofit organization.

(9) A rake-off may not be taken during a large-stakes or small-stakes tournament card game.

(10) The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided.

History: En. Sec. 37, Ch. 647, L. 1991; amd. Sec. 11, Ch. 626, L. 1993; amd. Sec. 5, Ch. 101, L. 2007; amd. Sec. 2, Ch. 64, L. 2013.

23-5-318. Poker run defined — authorization — conditions. (1) For the purposes of this section, "poker run" means a gambling activity involving a live poker card game conducted in the following manner:

(a) Each person pays valuable consideration to participate.

(b) A participant travels to designated locations and obtains a playing card at each location. Cards accumulated by the participant constitute a poker hand.

(c) After each participant has accumulated the required number of cards, the participants' poker hands are ranked as described in the poker run rules to determine the winner.

(2) It is lawful to conduct or participate in a poker run subject to the following conditions:

(a) Each participant must receive a copy of the rules for conducting the poker run before the poker run begins. The rules must include:

(i) the amount of the entry fee;
(ii) the type of poker game being played and ranking of poker hands;
(iii) the value of the prizes to be awarded;
(iv) a description of the locations where playing cards may be obtained; and
(v) the date and time during which the poker run will be conducted.

(b) The rules may provide for more than one winner of the ranked hands, with each winner receiving a prize, but a prize may not exceed $800 in value.

(c) Except as provided in subsection (2)(d), all consideration paid to participate in a poker run must be expended on the prize or prizes.

(d) If a poker run is conducted by a nonprofit organization, as defined in 23-5-112, the organization may retain a portion of the total amount paid to participate.

History: En. Sec. 1, Ch. 317, L. 1993; amd. Sec. 3, Ch. 64, L. 2013.

23-5-319. Repealed. Sec. 8, Ch. 101, L. 2007.

History: En. Sec. 1, Ch. 148, L. 1995.

23-5-320 reserved.

23-5-321. Issuance of permits by local governing bodies prohibited. A city, town, or county may not issue permits for live card games or live card game tables authorized in this part.

History: En. 62-707 by Sec. 7, Ch. 293, L. 1974; amd. Sec. 2, Ch. 508, L. 1977; R.C.M. 1947, 62-707; amd. Sec. 30, Ch. 642, L. 1989.

Cross-References

Local government — power to regulate gambling, 7-1-112, 23-5-171, 23-5-307, 23-5-408, 23-5-413, 23-5-620.

23-5-322. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-708 by Sec. 8, Ch. 293, L. 1974; amd. Sec. 3, Ch. 508, L. 1977; R.C.M. 1947, 62-708.

23-5-323. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-711 by Sec. 11, Ch. 293, L. 1974; R.C.M. 1947, 62-711.

23-5-324. Card room contractor's license — fee — submission of contract. (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.

(2) The department shall charge an annual license fee of $150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.

(3) The applicant shall submit at the time of application for a card room contractor's license a copy of a proposed lease agreement with a licensed operator.

History: En. Sec. 9, Ch. 647, L. 1991; amd. Sec. 4, Ch. 355, L. 2009.

23-5-325. Regulation of house players. (1) The department shall provide rules to regulate the use of house players by licensed operators and licensed card room contractors.

(2) House players may be used only for the purpose of starting a card game or maintaining a sufficient number of players in a card game.

(3) Any chips or money advanced by an operator, card room contractor, or dealer to a house player may not become a debt of the player.

(4) The operator, card room contractor, or dealer shall identify house players upon request.

History: En. Sec. 7, Ch. 101, L. 2007.

23-5-326 through 23-5-330 reserved.

23-5-331. Penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part or any ordinance, resolution, or rule adopted pursuant to this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. 62-712 by Sec. 12, Ch. 293, L. 1974; R.C.M. 1947, 62-712; amd. Sec. 34, Ch. 642, L. 1989.

23-5-332. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-713 by Sec. 13, Ch. 293, L. 1974; amd. Sec. 6, Ch. 508, L. 1977; R.C.M. 1947, 62-713.

Part 4
Bingo, Keno, Raffles, and Heads or Tails

23-5-401. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-715 by Sec. 1, Ch. 294, L. 1974; R.C.M. 1947, 62-715.

23-5-402. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 652, L. 1987.

23-5-403. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-726 by Sec. 12, Ch. 294, L. 1974; R.C.M. 1947, 62-726.

23-5-404 reserved.

23-5-405. Authorized live bingo, keno, raffles, and heads or tails. (1) A person may conduct or participate in a live bingo or keno game, raffle, or heads or tails game only if it is operated pursuant to this part.

(2) This part does not apply to a game simulated on a video gambling machine authorized by part 6 of this chapter.

History: En. Sec. 35, Ch. 642, L. 1989; amd. Sec. 5, Ch. 57, L. 2019.

23-5-406. Exempt charitable organizations and facilities. (1) (a) An organization granted an exemption under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

(i) on or before January 15, 1989, is exempt from taxation and the permit fee imposed by this part;

(ii) after January 15, 1989, is exempt from taxation and one-half the permit fee imposed by this part if the organization carries on gambling activities for no more than 60 days a calendar year.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

(iii) apply to the department for a permit to conduct charitable live bingo or keno games.

(2) A long-term care facility, as defined in 50-5-101, or a retirement home, as defined in subsection (4) of this section, that has obtained an operator's license and a permit from the

department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of an organization or a facility provided for in subsection (1) or (2) if, after investigation, the department determines that the organization or facility is operating or has contracted with a nonqualified organization that is operating live bingo or keno in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal care, as defined in 50-5-101.

History: En. Sec. 36, Ch. 642, L. 1989; amd. Sec. 38, Ch. 647, L. 1991; amd. Sec. 127, Ch. 42, L. 1997.

23-5-407. Live bingo or keno permit — fees — disposition of fees. (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises. The permit expires June 30 of each year.

(2) The permit fee for each premises in which a live bingo or keno game is conducted is $250.

(3) The department shall retain the permit fee for administrative purposes.

History: En. Sec. 37, Ch. 642, L. 1989; amd. Sec. 39, Ch. 647, L. 1991.

23-5-408. Hours of play — restrictions. A live bingo or keno game must be closed for play between the hours of 2 a.m. and 8 a.m. of each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: En. Sec. 42, Ch. 642, L. 1989.

23-5-409. Bingo and keno tax — records — distribution — statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of 1% of the gross proceeds from the operation of each live bingo and keno game operated on the licensee's premises.

(2) A licensee shall keep a record of gross proceeds in the form the department requires. At all times during the business hours of the licensee, the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds for each live keno or bingo game operated by the licensee and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

History: En. Sec. 38, Ch. 642, L. 1989; amd. Sec. 40, Ch. 647, L. 1991; amd. Sec. 372, Ch. 56, L. 2009.

23-5-410. Exemption from certain sections. A senior citizen center is exempt from 23-5-117, 23-5-177, 23-5-407, and 23-5-409 with respect to live bingo games if the center:

(1) limits participation in live bingo games to its members and members' guests;

(2) limits live bingo games to its main premises or place of operation; and

(3) does not operate live bingo games in a predominantly commercial manner.

History: En. Sec. 3, Ch. 473, L. 1991; amd. Sec. 3, Ch. 82, L. 2013.

23-5-411. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-715.1 by Sec. 7, Ch. 508, L. 1977; R.C.M. 1947, Sec. 62-715.1.

23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection (2):

(a) the price for an individual keno card may not exceed 50 cents; and

(b) a prize may not exceed the value of $100 for each individual keno card.

(2) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than $100.

(3) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(4) A bingo session must last at least 2 consecutive hours or 20 or more consecutive bingo games. A bingo session may not begin less than 2 hours after the conclusion of a prior session conducted on the same premises.

(5) Except as provided in subsections (6), (7), and (9):

(a) the price for an individual bingo card may not exceed $1;

(b) a prize may not exceed the value of $800 for each individual bingo game, and total bingo prize payouts may not exceed $3,000 during a bingo session.

(6) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

(a) no more than 50 cents is wagered on each bingo pattern; and

(b) a winning pattern does not pay more than $100.

(7) Subject to the department's approval, an operator licensed to conduct live bingo games may conduct up to five special bingo sessions a year, in which a bingo prize may not exceed the value of $800 and the total bingo prize payouts may not exceed $5,000 during the special bingo session. At least 30 days must elapse between the conclusion of one special bingo session and the beginning of the next special bingo session. Before the start of a special bingo session, the operator shall submit to the department an application for a special bingo session event permit. The application must be accompanied by a $10 fee, which the department shall retain for administrative purposes. An exempt charitable organization under 23-5-406 that offers live bingo activities is not eligible for a special bingo session event permit.

(8) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.

(9) An exempt charitable organization under 23-5-406 that conducts live bingo activities at a place other than its main premises or place of operations:

(a) is not limited to a maximum per-session prize payout limit;

(b) may not charge more than 50 cents for an individual bingo card; and

(c) may not award a bingo prize that exceeds $100 in value.

(10) If a licensed operator conducts a promotional game of chance involving bingo or keno, the value of the prize awarded as a result of the promotional game of chance may not exceed $100.

(11) It is unlawful to combine, in any manner, any bingo or keno games so as to increase the ultimate value of the prize. Bingo and keno prizes may be paid in either tangible personal property or cash or in any combination of tangible personal property and cash.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 465, L. 1985; amd. Sec. 39, Ch. 642, L. 1989; amd. Sec. 41, Ch. 647, L. 1991; amd. Sec. 12, Ch. 626, L. 1993; amd. Sec. 12, Ch. 134, L. 2005; amd. Sec. 5, Ch. 355, L. 2009; amd. Sec. 2, Ch. 66, L. 2011.

23-5-413. Raffle prizes — investigations — rulemaking. (1) (a) The department shall investigate all violations of this part.

(b) The department may adopt rules to require recordkeeping for receipts and payouts under this part and to establish procedures to ensure the fair selection of winners.

(2) (a) A person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(b) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization may not exceed $5,000. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(c) The provisions of subsections (2)(a) and (2)(b) do not apply to a nonprofit organization, a college, a university, a public school district as provided in 20-6-101 and 20-6-701, or a nonpublic school as described in 20-5-102(2)(e). The proceeds from the sale of tickets for a raffle conducted by a nonprofit organization, college, university, or school district may be used only for charitable purposes or to pay for prizes and may not be used for the administrative costs of conducting the raffle.

(3) (a) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state. Nonprofit organizations may sell raffle tickets outside the state of Montana if the purchase is not prohibited in the jurisdiction in which the purchaser resides.

(b) Except raffles sponsored by nonprofit organizations, the sale of raffle tickets may not be conducted over the internet. All raffle announcements or advertisements conducted over the internet must include this sale restriction, the name of the organization offering the raffle, and all raffle terms.

(c) Except for a raffle sponsored by a nonprofit organization, college, university, or school district, the sale of a raffle ticket may not be purchased with a credit card.

History: (1)En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); (2)En. Sec. 1, Ch. 510, L. 1981; amd. Sec. 1, Ch. 91, L. 1989; amd. Secs. 40, 73, Ch. 642, L. 1989; amd. Sec. 42, Ch. 647, L. 1991; amd. Sec. 1, Ch. 26, L. 1993; amd. Sec. 1, Ch. 288, L. 1993; amd. Sec. 6, Ch. 355, L. 2009; amd. Sec. 2, Ch. 276, L. 2017; amd. Sec. 3, Ch. 234, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 234, L. 2025. Amendment effective June 1, 2025.

23-5-414. Restrictions on bingo and keno. In the playing of live bingo or keno, a person who is not physically present on the premises where the game is actually conducted may not be allowed to participate as a player in the game.

History: En. 62-717 by Sec. 3, Ch. 294, L. 1974; R.C.M. 1947, 62-717; amd. Secs. 2, 3, Ch. 652, L. 1987; amd. Sec. 41, Ch. 642, L. 1989.

23-5-415. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-718 by Sec. 4, Ch. 294, L. 1974; R.C.M. 1947, 62-718.

23-5-416. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-721 by Sec. 7, Ch. 294, L. 1974; R.C.M. 1947, 62-721.

23-5-417. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-724 by Sec. 10, Ch. 294, L. 1974; amd. Sec. 10, Ch. 508, L. 1977; R.C.M. 1947, 62-724.

23-5-418. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-725 by Sec. 11, Ch. 294, L. 1974; amd. Sec. 11, Ch. 508, L. 1977; R.C.M. 1947, 62-725.

23-5-419. Heads or tails game — restrictions. (1) Only a nonprofit organization may sponsor and conduct a heads or tails game. Sponsors of a heads or tails game must identify themselves in promotions or announcements.

(2) All entry fees paid to play a heads or tails game must be divided between the sponsor and the winner of the game. At least 50% of the total amount of the entry fees must be paid to the sponsor. No part of the entry fees may be applied to administrative fees.

(3) A heads or tails game may be played at any public premises. If held on the premises of a licensed gambling operator, the activity must be managed by the sponsoring nonprofit organization and all marketing or promotions must clearly identify the sponsor.

(4) The individual tossing the coin and all participants in a heads or tails game must be physically present where the game takes place.

History: En. Sec. 1, Ch. 57, L. 2019.

23-5-420 reserved.

23-5-421. Repealed. Sec. 68, Ch. 642, L. 1989.
History: **En. 62-719 by Sec. 5, Ch. 294, L. 1974; amd. Sec. 8, Ch. 508, L. 1977; R.C.M. 1947, 62-719.**

23-5-422. Repealed. Sec. 68, Ch. 642, L. 1989.
History: **En. 62-720 by Sec. 6, Ch. 294, L. 1974; amd. Sec. 9, Ch. 508, L. 1977; R.C.M. 1947, 62-720.**

23-5-423. Repealed. Sec. 68, Ch. 642, L. 1989.
History: **En. 62-722 by Sec. 8, Ch. 294, L. 1974; R.C.M. 1947, 62-722.**

23-5-424. Manufacturer's license for electronic bingo or keno equipment — license and processing fees. (1) A person may not assemble, produce, manufacture, or supply electronic equipment for use in conducting live bingo or keno games in this state without obtaining an annual manufacturer's license from the department.

(2) The department shall charge an annual license fee of $1,000 for issuing or renewing a manufacturer's license.

(3) A manufacturer's license expires June 30 of each year, and the license fee may not be prorated.

(4) In addition to the license fee provided for in subsection (2), the department may charge a one-time manufacturer's application fee to cover the actual cost of processing the original license. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(5) The department shall retain for administrative purposes the license and processing fees collected under this section.
History: **En. Sec. 11, Ch. 647, L. 1991.**

23-5-425. Examination and approval of electronic bingo and keno equipment — fee. (1) A licensed manufacturer shall submit to the department for examination a prototype of any electronic equipment intended for use in conducting live bingo or keno games before the equipment is used in the state.

(2) Before the equipment is examined, the manufacturer shall pay the anticipated examination costs as determined by the department. The department shall refund an overpayment or charge and collect an amount sufficient to reimburse the department for underpayment of actual costs.

(3) Upon completion of the examination, the department may approve, disapprove, or place a condition upon use of the equipment before it is made available for use in conducting live bingo or keno games.
History: **En. Sec. 12, Ch. 647, L. 1991.**

23-5-426. Electronic live bingo and keno equipment specifications — rules. The department shall adopt rules describing electronic live bingo and keno equipment that may be approved under 23-5-425. At a minimum, the rules must provide that the equipment use a random selection process to determine the outcome of each game.
History: **En. Sec. 13, Ch. 647, L. 1991.**

23-5-427 through 23-5-430 reserved.

23-5-431. Criminal penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part or any ordinance, resolution, or rule adopted pursuant to this part is guilty of a misdemeanor punishable pursuant to 23-5-161.
History: **En. 62-723 by Sec. 9, Ch. 294, L. 1974; R.C.M. 1947, 62-723; amd. Sec. 43, Ch. 642, L. 1989.**

Part 5
Sports Pools

23-5-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) "Multiple competitor sports pool" means a sports pool in which three or more competitors simultaneously compete in a college or professional sports event or series of sports events. The term includes but is not limited to a sports event in which competitors are placed into a bracket.

(b) The term does not include multiple competitor sports pools utilizing any form of internet gambling as defined in 23-5-112.

(2) "Sports pool" means a gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2, of this title, in which a person wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events wherein the competitors in the sports event or series of sports events are natural persons or animals.

(3) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.

(4) "Sports tab game" means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event or series of sports events as provided in 23-5-503.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part); amd. Sec. 1, Ch. 22, L. 1989; amd. Sec. 43, Ch. 647, L. 1991; amd. Sec. 6, Ch. 61, L. 2015; amd. Sec. 1, Ch. 438, L. 2021.

23-5-502. Sports pools and sports tab games authorized — tax. (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

(a) sports pools and sports tab games may be conducted only by a licensed gambling operator on premises appropriately licensed to sell alcoholic beverages for consumption on the premises as provided in 23-5-119; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are appropriately licensed to sell alcoholic beverages for consumption on the premises under 23-5-119 may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A sports tab game seller licensed under 23-5-513 who sells sports tabs for use in a sports tab game shall collect from the purchaser, at the time of sale, a tax of $1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The sports tab game seller shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part.

History: En. 62-727.1 by Sec. 12, Ch. 508, L. 1977; R.C.M. 1947, 62-727.1; amd. Sec. 56, Ch. 647, L. 1991; amd. Sec. 2, Ch. 449, L. 1993; amd. Sec. 3, Ch. 13, L. 1997; amd. Sec. 9, Ch. 465, L. 1997; amd. Sec. 6, Ch. 57, L. 2019.

23-5-503. Rules. (1) (a) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances:

(i) the number of chances to be sold in that specific pool;

(ii) the name of the event or series of events;

(iii) the consideration to be paid for each chance; and

(iv) the total amount or percentage to be paid to the winners.

(b) The sports tabs must be purchased from a sports tab game seller licensed under 23-5-513.

(2) (a) Each sports tab must be sold for the same amount. A chance to participate in a sports pool may be sold in any combination so long as each chance is for the same amount. There is no limit on the dollar amount for a sports pool and sports tab, including the total amount paid to all winners of any individual sports tab game.

(b) Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the winners of any sports pool must receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization, licensed as a gambling operator, that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool or a sports tab game.

(c) A licensed gambling operator may conduct a sports pool or sports tab game to support a named nonprofit organization and may donate up to 50% of the value of the sports pool or sports tab game to the nonprofit organization.

(4) A licensed gambling operator conducting a sports pool or a sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part); amd. Sec. 2, Ch. 22, L. 1989; amd. Sec. 58, Ch. 642, L. 1989; amd. Sec. 45, Ch. 647, L. 1991; amd. Sec. 4, Ch. 13, L. 1997; amd. Sec. 1, Ch. 80, L. 2013; amd. Sec. 1, Ch. 273, L. 2017; amd. Sec. 7, Ch. 57, L. 2019; amd. Sec. 1, Ch. 75, L. 2021.

23-5-504. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-728 by Sec. 2, Ch. 290, L. 1974; R.C.M. 1947, 62-728.

23-5-505. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-729 by Sec. 3, Ch. 290, L. 1974; amd. Sec. 13, Ch. 508, L. 1977; R.C.M. 1947, 62-729.

23-5-506. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-730 by Sec. 4, Ch. 290, L. 1974; amd. Sec. 14, Ch. 508, L. 1977; R.C.M. 1947, 62-730.

23-5-507. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-731 by Sec. 5, Ch. 290, L. 1974; amd. Sec. 15, Ch. 508, L. 1977; R.C.M. 1947, 62-731.

23-5-508. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-732 by Sec. 6, Ch. 290, L. 1974; R.C.M. 1947, 62-732.

23-5-509. Penalty. A person who purposely or knowingly violates or who procures, aids, or abets in a violation of this part is guilty of a misdemeanor punishable pursuant to 23-5-161.

History: En. 62-733 by Sec. 7, Ch. 290, L. 1974; R.C.M. 1947, 62-733; amd. Sec. 59, Ch. 642, L. 1989.

23-5-510. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-735 by Sec. 9, Ch. 290, L. 1974; amd. Sec. 16, Ch. 508, L. 1977; R.C.M. 1947, 62-735.

23-5-511. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. 62-734 by Sec. 8, Ch. 290, L. 1974; R.C.M. 1947, 62-734.

23-5-512. Sports pool design — multiple competitor sports pool — department rules. (1) (a) Except as provided in subsection (2), a sports pool must be designed to ensure that:

(i) there is at least one winner from among the participants in the pool; and

(ii) each participant has an equal chance to win the pool.

(b) Competitors in a sports event or series of sports events must be randomly assigned to each participant in the sports pool.

(2) (a) A multiple competitor sports pool must be designed to ensure that:

(i) there is at least one winner, but there may be categories of winners among the participants in the pool; and

(ii) a participant's chance to win the pool may be based on the participant's relative skill in selecting competitors in a sports event or series of sports events.

(b) Nothing in subsection (2)(a)(ii) requires competitors in a multiple competitor sports pool to be randomly assigned to a participant in a sports pool.

(3) The department shall by rule describe the types of sports pools authorized by this part. Variations in the authorized sports pools must be submitted to the department for review and approval before they are made available for public play. The department may charge a nominal fee to review variations in the authorized sports pools.

History: En. Sec. 44, Ch. 647, L. 1991; amd. Sec. 2, Ch. 438, L. 2021.

23-5-513. Sports tab game seller's license — fees. (1) It is a misdemeanor for a person to sell sports tab games without first obtaining a sports tab game seller's license from the department.

(2) The department shall charge an annual license fee of $100 for issuing or renewing a license.

(3) A license expires on June 30 of each year, and the license fee may not be prorated.

(4) The department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

History: En. Sec. 2, Ch. 13, L. 1997.

Part 6
Video Gaming Machine Control Law

Part Cross-References

Slot machines, 23-5-112 (definition), 23-5-153.

23-5-601. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 1, Ch. 720, L. 1985; amd. Sec. 36, Ch. 83, L. 1989.

23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Aggregate gross income" means the sum total of the gross income of all video gambling machines owned by a licensed machine owner.

(2) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(3) "Automated accounting and reporting system" means a system that, at a minimum, is used to electronically report video gambling machine accounting data to the state.

(4) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(5) (a) "Bonus game" means a game other than a bingo, poker, keno, or video line game that is offered as a prize for playing and achieving a defined outcome by playing a bingo, poker, keno, or video line game. The term includes a game that allows a player to win free credits, free games, or a multiplier of credits already won or to move to an accelerated pay table for the play of a bingo, poker, keno, or video line game. A bonus game must make available to the player a display of the rules for the bonus game.

(b) The term does not include a game that allows the player to wager money or credits on the game or to lose money or credits already won. The term does not include a game by which the bonus game would become the predominant game rather than a bingo, poker, keno, or video line game. The department shall by administrative rule define the conditions that would cause a bonus game to be the predominant game. The term does not include a game that displays or simulates a gambling activity that is not legal under state law.

(6) "Electronically captured data" means video gambling machine accounting information and records of video gambling machine events, in electronic form, that are automatically recorded and communicated to the department through an approved automated accounting and reporting system.

(7) "Gross income" means money put into a video gambling machine minus credits paid out in cash. Gross income may be either a negative or a positive value.

(8) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno, as defined by rules of the department. The machine uses a

video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(9) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(10) "Multigame" means a combination of at least two or more approved types of games, including bingo, poker, keno, or video line games, within the same video gambling machine cabinet if the video gambling machine cabinet has been approved by the department.

(11) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department.

(12) "Player rewards system" means a system that rewards player loyalty, including but not limited to employing player rankings, awarding player points, or other promotions based on player engagement at an individual licensed premises as determined by using video gambling machine data, which may come from an automated accounting and reporting system, and other information gathered at an individual licensed premises.

(13) (a) "Poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, 5-card stud, 7-card stud, or hold 'em, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(14) (a) "Video line game" means a video line game as defined by rules of the department and approved by the department. A video line game uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash. Video line games may be offered only in a multigame video gambling machine cabinet.

(b) The term does not include a game played on a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

History: En. Sec. 2, Ch. 720, L. 1985; amd. Sec. 1, Ch. 154, L. 1987; amd. Sec. 1, Ch. 317, L. 1987; amd. Sec. 1, Ch. 603, L. 1987; amd. Sec. 44, Ch. 642, L. 1989; amd. Sec. 54, Ch. 647, L. 1991; amd. Sec. 17, Ch. 626, L. 1993; amd. Sec. 4, Ch. 424, L. 1999; amd. Sec. 1, Ch. 210, L. 2003; amd. Sec. 13, Ch. 134, L. 2005; amd. Sec. 1, Ch. 319, L. 2005; amd. Sec. 1, Ch. 121, L. 2011; amd. Sec. 2, Ch. 98, L. 2021; amd. Sec. 1, Ch. 598, L. 2023.

Cross-References

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-603. Video gambling machines — possession — play — restriction. (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, poker, keno, video line, and multigame video gambling machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) A video line game approved by the department for play must be made available to any licensed machine owner.

(4) A manufacturer may not charge a fee for the use of a bingo, poker, keno, video line, or multigame video gambling machine on a daily basis or any other periodic basis.

(5) A licensed operator, distributor, route operator, or manufacturer is prohibited from referencing games not authorized under this title in advertising, promoting, or inducing play of a video gambling machine. The department shall further define by rule what advertising is allowed under this subsection.

(6) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises consumption, as provided in 23-5-119, must be placed:

(a) in a room, area, or other part of the premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age.

History: En. Sec. 9, Ch. 720, L. 1985; amd. Sec. 2, Ch. 603, L. 1987; amd. Sec. 4, Ch. 652, L. 1987; amd. Sec. 45, Ch. 642, L. 1989; amd. Sec. 46, Ch. 647, L. 1991; amd. Sec. 10, Ch. 465, L. 1997; amd. Sec. 2, Ch. 121, L. 2011.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

23-5-604. Player rewards system — privacy of player — penalty. (1) (a) A licensed gambling operator may use a player rewards system. A player rewards system interface must be submitted to the state for approval pursuant to subsection (9), but the licensed gambling operator may utilize any technology available for the input or utilization of player rewards data.

(b) The department may not require approval of modifications to a video gambling machine cabinet by a manufacturer or licensee if the modifications do not have the potential to affect the play of the machine or any approved system.

(2) Player rewards system data received from a player rewards system:

(a) must remain confidential and may be used only for the purposes of player rewards;

(b) is protected as confidential trade secrets of the licensed gambling operator;

(c) may be used for managing and operating a player rewards system by the licensed gambling operator for the individual licensed premises where the system is located;

(d) may be electronically stored, including off-site electronic storage over the internet;

(e) may be accessed and used remotely by the player rewards system manufacturer, developer, distributor, video gaming machine route operator, or the licensed gambling operator for the purposes of maintenance, repairs, upgrades, and enhancements, as well as managing and operating a player rewards system, if access is authorized by the licensed gambling operator; and

(f) may not be shared between individual licensed premises.

(3) Any personally identifiable information of the player may not be used for any purpose other than for player rewards and may not be shared between individual licensed premises.

(4) A route operator may not tie the purchase, lease, or rental of a player rewards system to a video gambling machine route operator contract.

(5) Player rewards data must be retrievable in a common data format so that it may be exported from one system and imported into another system at the request of the licensed gambling operator.

(6) A player rewards system must be available for any licensed gambling operator to purchase, rent, or lease under similar terms.

(7) Player rewards data may be sold or passed from a licensed gambling operator to a party purchasing that same alcoholic beverage license or by the same licensed gambling operator if a new alcoholic license is purchased for use at the same individual licensed premises.

(8) A player may voluntarily opt in for membership in a player rewards system. A player who opts in to membership in a player rewards system is considered to have consented for personally identifiable information to be collected by the licensed gambling operator and for player rewards system data to be used for the purposes of player rewards. A player may opt out of a player rewards system at any time.

(9) If a player rewards system communicates with a video gambling machine, the department shall only test and approve the hardware interface and software interface to ensure that the player rewards system does not affect the play of the video gambling machine. For player rewards systems not communicating with a video gambling machine, department approval is not required, although the department may ensure that player rewards system data is protected and used in compliance with this section.

(10) The unauthorized use or dissemination of player rewards data is prohibited, and a violation of this section may be punished as provided in 23-5-136. The department may only investigate the reported misuse of a player rewards system and data. Any player rewards data obtained by the department must be protected as confidential trade secret property.

(11) The player rewards system manufacturer is required to license with the state as an associated gambling business.

History: En. Sec. 1, Ch. 98, L. 2021.

23-5-605. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 720, L. 1985; amd. Sec. 1, Ch. 211, L. 1987; amd. Sec. 3, Ch. 603, L. 1987.

23-5-606. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 3, Ch. 720, L. 1985; amd. Sec. 2, Ch. 211, L. 1987; amd. Sec. 1, Ch. 640, L. 1987; amd. Sec. 1, Ch. 344, L. 1989.

23-5-607. Expected payback — verification. (1) The department shall prescribe the expected payback value of credit awarded to be at least 80% of the value of credit played for each bingo, poker, keno, and video line game in a video gambling machine. The credit ratio may not be greater than 92% for each video line game.

(2) Each video gambling machine must have an electronic accounting device that the department may use to verify the winning percentage.

History: En. Sec. 4, Ch. 720, L. 1985; amd. Sec. 1, Ch. 163, L. 1987; amd. Sec. 4, Ch. 603, L. 1987; amd. Sec. 54, Ch. 642, L. 1989; amd. Sec. 3, Ch. 121, L. 2011.

23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash — ticket voucher expiration — rules. (1) A video gambling machine may not allow more than $2 to be played on a game or award free games or credits in excess of $800 a game.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher.

(3) The department may establish by rule a reasonable time period during which a player shall present a valid ticket voucher to the licensee for payment before the voucher may be considered expired and invalid.

History: En. Sec. 5, Ch. 720, L. 1985; amd. Sec. 3, Ch. 211, L. 1987; amd. Sec. 5, Ch. 603, L. 1987; amd. Sec. 53, Ch. 642, L. 1989; amd. Sec. 1, Ch. 227, L. 1995; amd. Sec. 3, Ch. 66, L. 2011; amd. Sec. 4, Ch. 121, L. 2011.

23-5-609. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 603, L. 1987; amd. Sec. 2, Ch. 344, L. 1989.

23-5-610. Video gambling machine gross income tax — records — distribution — payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the aggregate gross income from all video gambling machines issued a permit under this part in the manner prescribed by the department. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) The department shall, in accordance with the provisions of 17-2-124, forward the tax collected under subsection (1) of this section to the state treasurer for deposit in the general fund.

History: En. Sec. 9, Ch. 603, L. 1987; amd. Sec. 52, Ch. 642, L. 1989; amd. Sec. 47, Ch. 647, L. 1991; amd. Sec. 29, Ch. 15, Sp. L. July 1992; amd. Sec. 16, Ch. 398, L. 1993; amd. Sec. 31, Ch. 455, L. 1993; amd. Sec. 40, Ch. 18, L. 1995; amd. Secs. 5, 6, Ch. 424, L. 1999; amd. Sec. 1, Ch. 198, L. 2001; amd. Sec. 143, Ch. 574, L. 2001; amd. Sec. 2, Ch. 210, L. 2003; amd. Sec. 2, Ch. 319, L. 2005; amd. Sec. 25, Ch. 475, L. 2007; amd. Sec. 2, Ch. 598, L. 2023.

23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of multigame gambling machines as were operated on the premises on that date may be granted to the person who held the permit for that number of machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo, poker, keno, video line, or multigame video gambling machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination.

History: En. Sec. 8, Ch. 720, L. 1985; amd. Sec. 4, Ch. 211, L. 1987; amd. Sec. 46, Ch. 642, L. 1989; amd. Sec. 48, Ch. 647, L. 1991; amd. Sec. 11, Ch. 465, L. 1997; amd. Sec. 3, Ch. 210, L. 2003; amd. Sec. 3, Ch. 319, L. 2005; amd. Sec. 5, Ch. 121, L. 2011.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, parts 6 and 7.

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-612. Machine permits — fees. (1) The department, upon payment by the operator of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of $240 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit $140 of the annual permit fee or for a prorated fee shall deposit $105 for three quarters, $70 for two quarters, and $35 for one quarter collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.

History: En. Secs. 10, 12, Ch. 720, L. 1985; amd. Sec. 2, Ch. 154, L. 1987; amd. Sec. 6, Ch. 603, L. 1987; amd. Sec. 1, Ch. 496, L. 1989; amd. Secs. 47, 73, Ch. 642, L. 1989; amd. Sec. 49, Ch. 647, L. 1991; amd. Sec. 1, Ch. 210, L. 1993; amd. Sec. 2, Ch. 354, L. 1997; amd. Sec. 1, Ch. 29, L. 2003; amd. Sec. 2, Ch. 471, L. 2003; amd. Sec. 1, Ch. 528, L. 2005; amd. Sec. 4, Ch. 64, L. 2013.

23-5-613. Violations. Unless otherwise provided in this part, a person who purposely or knowingly violates or procures, aids, or abets a violation of this part or an ordinance, resolution, or rule adopted under this part is guilty of a misdemeanor punishable under 23-5-161.

History: En. Sec. 11, Ch. 720, L. 1985; amd. Sec. 5, Ch. 211, L. 1987; amd. Sec. 56, Ch. 642, L. 1989.

Cross-References

Definition of peace officer as used in MCA, 1-1-207.

Knowingly, negligently, and purposely defined for purposes of criminal law, 45-2-101.

Absolute criminal liability, 45-2-104.

23-5-614. Sale of video gambling machines. (1) A licensed operator who is not licensed as a manufacturer, distributor, or route operator may sell up to 20 video gambling machines in a calendar year if the operator sells the machines to another licensed operator or to a licensed manufacturer, distributor, or route operator.

(2) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed manufacturer, distributor, route operator, or operator may sell the machines to a licensed manufacturer, distributor, route operator, or operator.

(3) A licensed manufacturer or distributor may sell video gambling machines and associated equipment approved by the department for delivery to any jurisdiction outside of this state if the sale and transportation of the machines or equipment complies with all applicable local, tribal, state, and federal laws and regulations. Prior to the date of the sale, the seller shall notify the department of the terms of the sale, the identities of the seller, purchaser, and person

to whom the shipment will be made, the type and number of machines or equipment to be sold, and the method of shipment and provide the department with the approval of the jurisdiction in which the machines or equipment will be received. A person convicted of purposely or knowingly violating this subsection shall be punished as provided in 23-5-162.

History: En. Sec. 19, Ch. 626, L. 1993; amd. Sec. 3, Ch. 354, L. 1997; amd. Sec. 1, Ch. 302, L. 2023.

23-5-615. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 6, Ch. 720, L. 1985; amd. Sec. 7, Ch. 603, L. 1987.

23-5-616. Removal of machine from public access. If a machine fails to meet the specifications and requirements of this part or any rule of the department which specification or requirement existed at the time the machine was approved at any time after its initial permit has been issued, the operator shall immediately remove the machine from public access until it meets all requirements.

History: En. Sec. 6, Ch. 211, L. 1987; amd. Sec. 50, Ch. 642, L. 1989.

23-5-617. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 211, L. 1987.

23-5-618. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 8, Ch. 211, L. 1987.

23-5-619 reserved.

23-5-620. Video gambling machines — hours of play. A video gambling machine may not be played between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

History: En. Sec. 55, Ch. 642, L. 1989.

23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, including a description of the images and the minimum area of a screen that depicts a bingo, poker, keno, or video line game;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine to offer any combination of approved bingo, poker, keno, and video line games within the same video gambling machine cabinet if the owner of the video gambling machine has received approval to report video gambling machine information using an approved automated accounting and reporting system or has entered into an agreement with the department to use an approved automated accounting and reporting system;

(e) allow, on an individual license basis, licensed machine owners and operators of machines that use an approved automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected for business management, accounting, payroll, and player rewards purposes;

(ii) use a player rewards system; and

(iii) acquire and use, at the expense of a licensee, a department-approved site controller; and

(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that use an approved automated accounting and reporting system.

(2) The department's rules for an approved automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by 23-5-115(8) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department;

(d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be used by licensed operators, including the requirements for electronically captured data; and

(e) prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators.

History: En. Sec. 49, Ch. 642, L. 1989; amd. Sec. 7, Ch. 424, L. 1999; amd. Sec. 4, Ch. 210, L. 2003; amd. Sec. 14, Ch. 134, L. 2005; amd. Sec. 4, Ch. 319, L. 2005; amd. Sec. 7, Ch. 355, L. 2009; amd. Sec. 6, Ch. 121, L. 2011; amd. Sec. 3, Ch. 98, L. 2021.

23-5-622. Tampering with video gambling machine — penalty. (1) A person commits the offense of tampering with a video gambling machine if the person purposely or knowingly:

(a) manipulates the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine; or

(b) exploits a hardware or software feature or combination of features that alters the video gambling machine's intended and approved functioning, including:

(i) causing the machine to register more value in credits than deposited or won through play;

(ii) altering the chance element of the game;

(iii) altering the pay table of the game; or

(iv) permitting play contrary to the posted rules or recognized rules of play.

(2) A violation of this section is a felony and must be punished in accordance with 23-5-162.

History: En. Sec. 57, Ch. 642, L. 1989; amd. Sec. 373, Ch. 56, L. 2009; amd. Sec. 3, Ch. 276, L. 2017.

23-5-623 and 23-5-624 reserved.

23-5-625. Video gambling machine manufacturer — license — fees — restrictions. (1) It is unlawful for any person to assemble, produce, test, or manufacture any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer's license by the department. A licensed manufacturer may supply a video gambling machine only to another licensed manufacturer or to a licensed distributor, route operator, or operator.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for the issuance or renewal of a video gambling machine manufacturer's license.

(3) Except as provided in subsection (6), the department may charge the applicant an additional, one-time video gambling machine manufacturer's license application processing fee. The application processing fee may not exceed the department's actual costs for processing an application.

(4) All video gambling machine manufacturer's licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive the application processing fee provided for in subsection (3) if the applicant is licensed as a distributor, route operator, or operator.

History: En. Sec. 2, Ch. 317, L. 1987; amd. Sec. 51, Ch. 642, L. 1989; amd. Sec. 50, Ch. 647, L. 1991; amd. Sec. 18, Ch. 626, L. 1993; amd. Sec. 15, Ch. 134, L. 2005.

23-5-626. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 3, Ch. 317, L. 1987.

23-5-627. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 4, Ch. 317, L. 1987.

23-5-628. Inspection of premises, records, and devices. The department or a local law enforcement official may inspect at any time a premises, as defined in 23-5-112, or a facility where gambling devices are manufactured or distributed. The inspection may include the examination of records, equipment, and proceeds related to the operation of a gambling activity or the manufacture or distribution of a gambling device. A premises may use an access control system as provided in 16-6-103.

History: En. Sec. 10, Ch. 647, L. 1991; amd. Sec. 2, Ch. 153, L. 2019.

23-5-629. Permit for premises within 150 feet of another premises. (1) (a) A licensee may not be granted a permit for video gambling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners and operate in an interrelated manner, as defined by department rule. A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(b) A premises for which an on-premises alcoholic beverages license was granted, was applied for, or the transfer of which was validly contracted for prior to February 1, 1995, is not subject to subsection (1)(a) during the 10-year period following October 1, 1995. A premises licensed before January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on October 1, 1995, was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the other premises;

(iii) an agreement with the other premises or the other premises' shareholders, partners, or other individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the agreement has other financial components, such as a landlord and tenant relationship or noninstitutional financing; or

(iv) a premises rental agreement with the other premises or its shareholders, partners, or other individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined by a Montana independent appraisers association appraisal done at the time that the rental rate is set or changed.

(b) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary business entity, investor, person or entity with a commonality of business interests, or other person or entity able to influence the operator or manager of the premises or to prevent the operator or manager from fully pursuing the premises' separate interests.

(c) "Commonality of business interests" means:

(i) a contract, deed, contract for deed, concession agreement, or lease, rental, or other agreement involving real property, with the same person or entity, except:

(A) a commercial mall with at least 50,000 square feet and at least eight separate businesses; or

(B) an agreement by a licensee to lease premises from a person or entity that also leases other premises in the same building or structure to one or more licensees if there is no other common ownership between any of the licensees; or

(ii) that the same person or entity, except a financial institution, provides the financing for:

(A) the purchase of the liquor license;

(B) the purchase of the premises; or

(C) operating expenses of more than $25,000, except for expenses allowed under 23-5-130.

(d) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and nephews.

(f) "Investor" means a person who:

(i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

(ii) guarantees a loan, except a loan guaranteed by a route operator who would not otherwise be considered a common owner; or

(iii) has an option to participate in the premises.

History: En. Sec. 1, Ch. 480, L. 1995; amd. Sec. 4, Ch. 276, L. 2017.

23-5-630 reserved.

23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. A licensed manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the state prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) must be deposited in an account in the state special revenue fund and used to administer this part and for other purposes provided by law.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.

History: En. Sec. 6, Ch. 317, L. 1987; amd. Sec. 48, Ch. 642, L. 1989; amd. Sec. 51, Ch. 647, L. 1991; amd. Sec. 17, Ch. 398, L. 1993; amd. Sec. 20, Ch. 626, L. 1993; amd. Sec. 4, Ch. 354, L. 1997; amd. Sec. 2, Ch. 190, L. 2003; amd. Sec. 2, Ch. 327, L. 2005.

23-5-632 through 23-5-634 reserved.

23-5-635. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 5, Ch. 317, L. 1987.

23-5-636. Repealed. Sec. 68, Ch. 642, L. 1989.

History: En. Sec. 7, Ch. 317, L. 1987.

23-5-637. Approved automated accounting and reporting systems. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may approve an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection (6) or as provided in an agreement for multiple-game software, utilization of an approved automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license.

(3) An approved automated accounting and reporting system must provide for the recording and entry of video gambling machine permit and tax information and for the electronic transfer of funds through the use of web entry technology, the internet, or direct electronic communication with the department.

(4) (a) Information from an approved automated accounting and reporting system may be submitted electronically, manually, or in any other way considered appropriate by the department. Licensed gambling operators may choose which form of reporting occurs. A player rewards system may be used by any licensed gambling operator regardless of the type of automated accounting and reporting system used by the licensed gambling operator.

(b) For information submitted electronically, the approved automated accounting and reporting system data must be made available for access by the route operator, the licensed gambling operator, and the automated accounting and reporting system provider.

(5) A permit may not be issued for a video gambling machine manufactured after July 1, 2005, that is not manufactured in a manner specifically designed to comply with communications standards adopted by department rules.

(6) If a permitholder voluntarily utilizes an approved automated accounting and reporting system for one or more video gambling machines at a premises, all video gambling machines on the premises that utilize the approved system, including video gambling machines replacing video gambling machines that utilize the approved system, must continue to use the approved system as long as video gambling machines are operated on the premises.

History: En. Sec. 1, Ch. 424, L. 1999; amd. Sec. 5, Ch. 210, L. 2003; amd. Sec. 5, Ch. 319, L. 2005; amd. Sec. 4, Ch. 98, L. 2021.

23-5-638. Repealed. Sec. 6, Ch. 319, L. 2005.

History: En. Sec. 2, Ch. 424, L. 1999.

23-5-639 through 23-5-645 reserved.

23-5-646. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 28, Ch. 15, Sp. L. July 1992; amd. Sec. 32, Ch. 455, L. 1993.

Part 7
Casino Nights

23-5-701. Definitions. Unless the context requires otherwise, for purposes of this part, "casino night" means a fundraising event during which wagers may be made in gambling activities authorized in 23-5-702 through the use of imitation money.

History: En. Sec. 14, Ch. 647, L. 1991.

23-5-702. Casino nights authorized. (1) Nonprofit organizations may conduct or participate in a casino night.

(2) The following gambling activities may be conducted during a casino night:

(a) live card games authorized under 23-5-311;

(b) live bingo and keno games; and

(c) raffles.

History: En. Sec. 15, Ch. 647, L. 1991.

23-5-703 and 23-5-704 reserved.

23-5-705. Application for permit. (1) A nonprofit organization may apply to the department for a casino night permit on a form prescribed and furnished by the department. The application must be accompanied by a fee of $25.

(2) The application must include:

(a) the name and address of the applicant;

(b) the name and address of the applicant's officers;

(c) the location, date, and time at which the applicant will conduct the casino night;

(d) sufficient evidence concerning the structure and operation of the organization to enable the department to determine whether the applicant is a nonprofit organization; and

(e) other relevant information requested by the department.

History: En. Sec. 16, Ch. 647, L. 1991.

23-5-706. Issuance of permit — disposition of fee. (1) After review of an application submitted under 23-5-705, the department may issue to the applicant a casino night permit. Only one permit may be issued to the applicant each year. The permit is valid for only one location and is not assignable or transferable.

(2) The department shall retain the fee provided for in 23-5-705 for administrative purposes.

History: **En. Sec. 17, Ch. 647, L. 1991.**

23-5-707 through 23-5-709 reserved.

23-5-710. Requirements for conducting casino nights. A nonprofit organization that has obtained a permit under 23-5-706 shall conduct a casino night in compliance with the following conditions:

(1) (a) Except as provided in subsection (1)(b), a casino night may not last more than 12 consecutive hours.

(b) A casino night may be split into two separate, 6-consecutive hour sessions that may not be held on the same day but must be held in the same calendar year.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under 23-5-706. The members may not be compensated for their services.

(3) Only merchandise or cash may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds.

(5) If cash prizes are awarded, the prizes for bingo and keno may not exceed the prize limits established in 23-5-412. Live card games must be limited to those authorized in 23-5-311, and the prizes may not exceed the prize amount established in 23-5-312.

(6) A casino night may not include a card game tournament provided for in 23-5-317.

History: **En. Sec. 18, Ch. 647, L. 1991; amd. Sec. 1, Ch. 171, L. 1999; amd. Sec. 6, Ch. 101, L. 2007.**

23-5-711. Nonapplicability of certain gambling laws. The provisions of parts 3 and 4 of this chapter, except 23-5-311, do not apply to live card games, live bingo or keno games, or raffles conducted during a casino night.

History: **En. Sec. 19, Ch. 647, L. 1991.**

23-5-712 through 23-5-714 reserved.

23-5-715. Rules. The department shall adopt rules to administer this part. At a minimum, the rules must address application procedures and play of the games during a casino night.

History: **En. Sec. 20, Ch. 647, L. 1991.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 8
Fantasy Sports Leagues

23-5-801. Fantasy sports leagues defined. As used in this part, a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings, a bidding process, or by selection from a roster prepared by the parimutuel network coordinator.

(3) Except for fantasy sports leagues operated under Title 23, chapter 4, after the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A league member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) The roster of eligible participants prepared by the parimutuel network must be provided to each league member.

(7) Rules governing the conduct of the fantasy sports league must be provided in writing to each league member.

History: En. Sec. 21, Ch. 647, L. 1991; amd. Sec. 8, Ch. 387, L. 2007.

23-5-802. Fantasy sports leagues authorized. It is lawful to conduct or participate in a fantasy sports league, including a fantasy sports league that is operated under a parimutuel system of wagering regulated under Title 23, chapter 4. It is unlawful to wager on a fantasy sports league by telephone or by the internet.

History: En. Sec. 22, Ch. 647, L. 1991; amd. Sec. 9, Ch. 387, L. 2007.

23-5-803 and 23-5-804 reserved.

23-5-805. Payouts — administrative fees charged by commercial establishments. (1) Except as provided in subsection (2)(b), the total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.

(2) (a) Except as provided in subsection (2)(b), if a commercial establishment charges an administrative fee for conducting a fantasy sports league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

(b) The parimutuel network, as defined in 23-4-101, shall distribute all funds wagered on fantasy sports leagues in any wagering pool pursuant to the requirements of 23-4-302 and 23-4-304.

History: En. Sec. 23, Ch. 647, L. 1991; amd. Sec. 10, Ch. 387, L. 2007.

23-5-806. Repealed. Sec. 24, Ch. 284, L. 2019.

History: En. Sec. 24, Ch. 647, L. 1991; amd. Sec. 11, Ch. 387, L. 2007.

23-5-807 through 23-5-809 reserved.

23-5-810. Violations. A person who purposely or knowingly violates or procures, aids, or abets in a violation of this part is guilty of a misdemeanor punishable under 23-5-161.

History: En. Sec. 25, Ch. 647, L. 1991.

Part 9 reserved

Part 10
State Lottery
(Renumbered)

23-5-1001. Renumbered 23-7-101. Sec. 57, Ch. 647, L. 1991.

23-5-1002. Renumbered 23-7-102. Sec. 57, Ch. 647, L. 1991.

23-5-1003. Renumbered 23-7-103. Sec. 57, Ch. 647, L. 1991.

23-5-1004 and 23-5-1005 reserved.

23-5-1006. Renumbered 23-7-201. Sec. 57, Ch. 647, L. 1991.

23-5-1007. Renumbered 23-7-202. Sec. 57, Ch. 647, L. 1991.

23-5-1008. Renumbered 23-7-203. Sec. 57, Ch. 647, L. 1991.

23-5-1009 and 23-5-1010 reserved.

23-5-1011. Renumbered 23-7-210. Sec. 57, Ch. 647, L. 1991.

23-5-1012. Renumbered 23-7-211. Sec. 57, Ch. 647, L. 1991.

23-5-1013. Renumbered 23-7-212. Sec. 57, Ch. 647, L. 1991.

23-5-1014 and 23-5-1015 reserved.

23-5-1016. Renumbered 23-7-301. Sec. 57, Ch. 647, L. 1991.

23-5-1017. Renumbered 23-7-302. Sec. 57, Ch. 647, L. 1991.

23-5-1018. Renumbered 23-7-305. Sec. 57, Ch. 647, L. 1991.

23-5-1019. Renumbered 23-7-306. Sec. 57, Ch. 647, L. 1991.

23-5-1020. Renumbered 23-7-307. Sec. 57, Ch. 647, L. 1991.

23-5-1021. Renumbered 23-7-310. Sec. 57, Ch. 647, L. 1991.

23-5-1022. Renumbered 23-7-311. Sec. 57, Ch. 647, L. 1991.

23-5-1023 through 23-5-1025 reserved.

23-5-1026. Renumbered 23-7-401. Sec. 57, Ch. 647, L. 1991.

23-5-1027. Renumbered 23-7-402. Sec. 57, Ch. 647, L. 1991.

23-5-1028. Renumbered 23-7-410. Sec. 57, Ch. 647, L. 1991.

23-5-1029. Renumbered 23-7-411. Sec. 57, Ch. 647, L. 1991.

23-5-1030. Renumbered 23-7-412. Sec. 57, Ch. 647, L. 1991.

23-5-1031 through 23-5-1035 reserved.

23-5-1036. Renumbered 23-7-110. Sec. 57, Ch. 647, L. 1991.

Part 11
Calcutta Pools
(Renumbered and Repealed)

23-5-1101. Renumbered 23-5-221. Sec. 72, Ch. 642, L. 1989.

23-5-1102. Renumbered 23-5-222. Sec. 72, Ch. 642, L. 1989.

23-5-1103. Repealed. Sec. 68, Ch. 642, L. 1989.
History: En. Sec. 3, Ch. 550, L. 1987.

23-5-1104. Repealed. Sec. 68, Ch. 642, L. 1989.
History: En. Sec. 4, Ch. 550, L. 1987.

23-5-1105. Renumbered 23-5-223. Sec. 72, Ch. 642, L. 1989.

23-5-1106. Renumbered 23-5-224. Sec. 72, Ch. 642, L. 1989.

CHAPTER 6
AMUSEMENT GAMES

Part 1 — General

23-6-101. Definitions.
23-6-102. Requirements for games.
23-6-103. Permits.
23-6-104. Amusement games allowed.
23-6-105. Authority to inspect.
23-6-106. Gambling and illegal gambling devices and enterprises prohibited.
23-6-107. Violations.

Chapter Cross-References

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.; 23-5-151.

Part 1
General

23-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this part:

(1) "Arcade" means a commercial establishment whose primary purpose is to make amusement games available for public play.

(2) "Concessionaire" means a person who owns one or more amusement games and who enters into an agreement with an operator, as defined in subsection (5)(a), to conduct games. A concessionaire may also be an operator.

(3) "Crane game" means an amusement game activated by the insertion of a coin or token by which the player uses one or more buttons, control sticks, or similar means of control or a combination of those means of control to position a mechanical or electromechanical claw or other retrieval device over a prize and attempts to retrieve it.

(4) "Nonprofit organization" means a nonprofit corporation or a nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, established for a purpose other than conducting amusement games.

(5) "Operator" means a person who:

(a) enters into an agreement with a county fair commission, board of directors of a fair district, joint fair and civic center commission, business, or an association of businesses, such as a shopping center or downtown area, to provide amusement games; or

(b) makes an amusement game available for public play on premises owned by the operator or on premises owned by another person.

(6) "Prize" means:

(a) tangible personal property; or

(b) nontransferable tokens or tickets that may be accumulated and redeemed for tangible personal property.

History: En. Sec. 1, Ch. 523, L. 1991; amd. Sec. 1, Ch. 327, L. 1993.

23-6-102. Requirements for games. An operator, concessionaire, nonprofit organization, or arcade may provide amusement games to the public under the following conditions:

(1) The sale of a right to participate, the determination of winners, and the distribution of prizes all occur in the presence of all players.

(2) The appropriate permit to operate the game has been obtained as provided for in 23-6-103.

(3) The player pays cash for the right to play the game.

(4) Only a prize may be awarded, and a prize may not be repurchased from a player. Prizes, as defined in 23-6-101(6)(a), and tangible personal property that may be obtained through redemption of tokens or tickets must be displayed.

(5) (a) If tangible personal property, rather than tokens or tickets, is awarded following play of the amusement game, the wholesale value of the property may not exceed $50.

(b) If tokens or tickets are awarded following play of the amusement game:

(i) the value of the tokens or tickets for redemption purposes may not exceed 5 cents;

(ii) the maximum number of tokens or tickets awarded after a single play of the amusement game may not exceed the value of 10 times the total amount paid by all participants to play the amusement game; and

(iii) any tangible personal property for which tokens or tickets are redeemed may exceed a wholesale value of $50.

(6) The system for awarding prizes does not require forfeiture of a previously won prize unless the prize is traded for a prize of equal or greater value.

(7) Concealed numbers or conversion charts are not used in conducting the game.

(8) The game is not designed or adapted with a control device to permit manipulation of the game to control the ability of a player to win or to predetermine who the winner will be. A crane game may not contain a variable resistor or any turn screw, knob, potentiometer, or similar device that may be used to alter the closing strength of the game's claws or retrieval device.

(9) The object of the game is attainable and possible to perform, under the stated game rules, from the playing position of the player.

(10) The game is conducted in a fair and honest manner and does not constitute a fraud upon the players.

History: En. Sec. 2, Ch. 523, L. 1991; amd. Sec. 2, Ch. 327, L. 1993.

23-6-103. Permits. (1) Before making an amusement game available for public play, an operator, concessionaire, nonprofit organization, or arcade shall obtain the appropriate permit, as provided in subsections (2) through (4), from the board of county commissioners of the county in which the game is to be made available for public play. The board of county commissioners may not charge a fee for issuing a permit under this section.

(2) The board of county commissioners may issue a permit to an operator, as defined in 23-6-101(5)(a), a concessionaire, or a nonprofit organization. Each permit entitles the permittee to operate amusement games in the county for a maximum of 14 consecutive days.

(3) The board of county commissioners may issue an operator, as defined in 23-6-101(5)(b), an annual permit for each amusement game to be operated in the county. A permit is effective January 1 through December 31. An operator, as defined in 23-6-101(5)(a), a concessionaire, a nonprofit organization, or an arcade that makes an amusement game available for public play need not obtain a permit under this subsection.

(4) The board of county commissioners may issue an annual permit to an arcade. A permit is effective January 1 through December 31.

History: En. Sec. 3, Ch. 523, L. 1991.

23-6-104. Amusement games allowed. (1) Crane games, as defined in 23-6-101, and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target. All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7½ pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(v) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

(xviii)Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when the player hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

(xix) Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

(xx) Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

(xxi) Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

(xxii) Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if the player accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1¼ inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

(h) Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall).

(A) The games in each of the following sentences require the player to insert a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer) operating on a playing field containing additional coins, tokens, or merchandise. A coin that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional coins to push coins into a counting mechanism that will convert the coins into tokens or tickets and dispense them to the player. A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens or merchandise to push the tokens or merchandise into a hole or chute that sends them to the player. A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens to push tokens into a hole or chute that sends them to the player or pushes tokens into a counting mechanism that will convert the tokens into tickets and dispense them to the player.

(B) There may not be a ledge, tip, or similar obstruction that inhibits the passage of coins, tokens, or merchandise into the counting mechanism, hole, or chute.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with five holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances a horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls the ball, the faster the player's horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when the player either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator.

(xiv) Other coin- or token-operated games of skill. The player inserts a coin or token into a mechanical, electrical, or electromechanical device manufactured for bona fide amusement purposes only that dispenses tokens or tickets based on the player's skill in operating the device. Games authorized under this subsection are limited to those involving a substantial degree of skill. A substantial degree of skill is present if:

(A) a player's physical or mental abilities play an integral role in determining the number of tokens or tickets accumulated during the play of the game;

(B) the number of tokens or tickets initially received by the average player would increase with repeated play of the game; and

(C) a player's precision, dexterity, or knowledge enables the player to obtain more tokens or tickets than would be received by a less precise, dexterous, or knowledgeable player.

(3) In addition to the amusement games allowed by subsections (1) and (2), the department of justice may adopt rules allowing games that may be operated at a fair or carnival and that meet the requirements of this part and may set and collect fees to offset the costs associated with review and approval.

History: En. Sec. 4, Ch. 523, L. 1991; amd. Sec. 3, Ch. 327, L. 1993; amd. Sec. 1, Ch. 353, L. 1993; amd. Sec. 21, Ch. 626, L. 1993.

23-6-105. Authority to inspect. At any time during normal business hours, local law enforcement officers and department of justice employees may inspect any amusement game made available for public play by an operator, concessionaire, nonprofit organization, or arcade for compliance with 23-6-102.

History: En. Sec. 5, Ch. 523, L. 1991.

23-6-106. Gambling and illegal gambling devices and enterprises prohibited. An operator, concessionaire, nonprofit organization, or arcade may not make available for play a gambling or illegal gambling device or enterprise governed under Title 23, chapter 5, parts 1 through 6.

History: En. Sec. 6, Ch. 523, L. 1991.

23-6-107. Violations. A person who purposely or knowingly violates or procures, aids, or abets in a violation of 23-6-102 is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 7, Ch. 523, L. 1991.

CHAPTER 7
STATE LOTTERY

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Part 1
General

23-7-101. Short title. This chapter may be cited as the "Montana State Lottery Act of 1985 and Sports Wagering Lottery Amendment of 2019".

History: En. Sec. 1, Ch. 669, L. 1985; Sec. 23-5-1001, MCA 1989; redes. 23-7-101 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 3, Ch. 284, L. 2019.

23-7-102. Purpose. (1) The purpose of this chapter is to allow lottery games and sports wagering in which the player purchases from the state, through the administrators of the state lottery and sports wagering agency, a chance to win a prize. The state lottery and sports wagering agency may provide products sold only through an authorized device at a sales agent location licensed by the director.

(2) The administration and construction of this chapter must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, this chapter must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game" or "sports wagering".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state except for a lottery game or sports wagering within the scope of this section and within the definition of "lottery game" or "sports wagering".

History: En. Sec. 2, Ch. 669, L. 1985; Sec. 23-5-1002, MCA 1989; redes. 23-7-102 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 11, Ch. 385, L. 2015; amd. Sec. 4, Ch. 284, L. 2019.

23-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the state lottery and sports wagering commission created by 23-7-201.

(2) "Director" means the director appointed by the governor under 23-7-210 to administer and manage the state lottery.

(3) (a) "Lottery game" means any procedure, including any online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, sports pool games, and sports wagering.

(b) The term does not mean games prohibited by Title 23, chapter 5, part 1; Calcutta pools governed by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

(4) "Lottery license" means a license issued by the state lottery that authorizes a sales agent to sell lottery tickets at a fixed place of business.

(5) "Prizes" means any winning tickets, chances, wagers, or bets validated by the state lottery central gaming system and sold by any sales agent.

(6) "Sales agent" means an entity that holds a lottery license or sports wagering license as provided in this chapter.

(7) (a) "Sports wagering" means accepting wagers on sporting events or portions of sporting events, or on the individual performance statistics of athletes in a sporting event or combination of sporting events, by any system or method of wagering, including but not limited to in-person or over the internet through websites and on mobile devices. The term includes but is not limited to single-game bets, teaser bets, parlays, over-under, money line, pools, exchange wagering, in-game wagering, in-play bets, and proposition bets.

(b) The term does not include:

(i) any wagers made outside the state;

(ii) any fantasy or simulated game or contest such as fantasy sports in which:

(A) participants own, manage, or coach imaginary teams;

(B) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;

(C) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals, including athletes in the case of sporting events; and

(D) no winning outcome is based solely on the performance of an individual athlete or on the score, point spread, or any performances or any single real-world team or any combination of real-world teams.

(8) "Sports wagering account" means a financial record established in a sports wagering facility for an individual in which funds may be deposited or withdrawn and winnings may be credited for sports wagering.

(9) "Sports wagering equipment" means a mechanical, electronic, or other device, mechanism, or other gaming equipment and related supplies that is connected to the state lottery central gaming system and used or consumed in the operation of sports wagering at the licensed sports wagering facility including a self-service terminal installed to accept sports wagers.

(10) "Sports wagering facility" means a lottery location approved under a sports wagering license and licensed under Title 23, chapter 5, as a gambling operator.

(11) "Sports wagering license" means a license issued by the state lottery that authorizes the operation of sports wagering through sports wagering equipment, including sports wagering conducted through mobile application or other digital platforms that is initiated and received or otherwise made exclusively within the physical confines using location-based services of the single approved sports wagering facility.

(12) "State lottery" means the Montana state lottery and sports wagering agency created and operated pursuant to this chapter.

(13) (a) "Wager" or "bet" means the staking or risking by a person of something of value upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

(b) The terms "wager" or "bet" do not include:

(i) any activity governed by the securities laws of the United States or the Securities Act of Montana in Title 30, chapter 10;

(ii) a contract of indemnity or guarantee, including a contract for insurance; or

(iii) participation in any game or contest in which the participants do not stake or risk anything of value other than personal efforts of the participants in playing the game or contest or obtaining access to the internet, or points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.

History: En. Sec. 3, Ch. 669, L. 1985; Sec. 23-5-1003, MCA 1989; redes. 23-7-103 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 128, Ch. 42, L. 1997; amd. Sec. 5, Ch. 284, L. 2019.

23-7-104. Authorization of sports wagering. As it pertains to the state lottery, the operation of sports wagering and ancillary activities are lawful activities in the state of Montana when conducted in accordance with the provisions of this chapter and rules of the commission.

History: En. Sec. 1, Ch. 284, L. 2019.

23-7-105 through 23-7-109 reserved.

23-7-110. Penalties. It is a misdemeanor, punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets, chances, or sports wagering in violation of 23-7-301(9);

(2) violate 23-7-301(11);

(3) sell a lottery ticket, chance, wager, or bet to a person under 18 years of age;

(4) violate subsection (3) or (4) of 23-7-302;

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of 23-7-306;

(6) violate 23-7-307;

(7) violate 23-7-310; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery or sports wagering equipment or materials.

History: En. Sec. 20, Ch. 669, L. 1985; Sec. 23-5-1036, MCA 1989; redes. 23-7-110 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 6, Ch. 284, L. 2019.

Part 2
Administration

23-7-201. State lottery and sports wagering commission — allocation — composition — compensation — quorum. (1) There is a state lottery and sports wagering commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner must be appointed to a 4-year term of office, and the terms must be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as presiding officer.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, as provided in 2-15-122 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 4, Ch. 669, L. 1985; Sec. 23-5-1006, MCA 1989; redes. 23-7-201 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 57, Ch. 483, L. 2001; amd. Sec. 7, Ch. 284, L. 2019; amd. Sec. 5, Ch. 603, L. 2023.

23-7-202. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery;

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery and sports wagering games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state general fund and to the Montana STEM scholarship program special revenue account under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets, chances, wagers, or bets to be paid out as prizes;

(5) determine the price of each ticket, chance, wager, or bet and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games and sports wagering;

(7) carry out, with the director, a continuing study of the state lottery in Montana and other states' lotteries and sports wagering operations to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with:

(a) other lottery states and countries to offer lottery games; or

(b) an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to

this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, and to the legislature in accordance with 5-11-210;

(10) adopt rules relating to lottery and sports wagering and any other rules necessary to carry out this part, including but not limited to:

(a) acceptance of wagers on a sports event or a series of sports events;

(b) the type of wagering tickets that may be used;

(c) method of issuing tickets;

(d) method of accounting and associated reporting minimums to be used by sales agent;

(e) sales agent licensing requirements and prohibitions;

(f) method of age verification;

(g) player exclusion requirements;

(h) protections for an individual placing a wager;

(i) contribution and participation in responsible gaming and consumer protection activities and programs; and

(j) ensuring game integrity through monitoring and reporting of suspicious betting activity and equipment tampering; and

(11) prescribe policies relating to sports wagering sales agents' commissions without conducting rulemaking under Title 2, chapter 4, but otherwise meet the requirements of this chapter.

History: En. Sec. 5, Ch. 669, L. 1985; amd. Sec. 1, Ch. 161, L. 1987; amd. Sec. 1, Ch. 248, L. 1989; amd. Sec. 2, Ch. 408, L. 1989; Sec. 23-5-1007, MCA 1989; redes. 23-7-202 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 17, Ch. 799, L. 1991; amd. Sec. 45, Ch. 509, L. 1995; amd. Sec. 1, Ch. 211, L. 2003; amd. Sec. 12, Ch. 385, L. 2015; amd. Sec. 8, Ch. 284, L. 2019; amd. Sec. 62, Ch. 261, L. 2021; amd. Sec. 2, Ch. 15, L. 2023.

Cross-References

Interception of lottery winnings for unemployment insurance offsets, 39-51-3208.

23-7-203. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 2, Ch. 161, L. 1987; amd. Sec. 3, Ch. 408, L. 1989; amd. Sec. 30, Ch. 112, L. 1991; Sec. 23-5-1008, MCA 1989; redes. 23-7-203 by Sec. 57, Ch. 647, L. 1991.

23-7-204 through 23-7-209 reserved.

23-7-210. Director — appointment — qualifications. (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery, including sports wagering. The director must be a full-time employee and may not own or be employed by a gaming supplier or sales agent.

History: En. Sec. 6, Ch. 669, L. 1985; Sec. 23-5-1011, MCA 1989; redes. 23-7-210 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 58, Ch. 483, L. 2001; amd. Sec. 9, Ch. 284, L. 2019; amd. Sec. 2, Ch. 335, L. 2021; amd. Sec. 1, Ch. 105, L. 2023.

23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket, chance, and sports wagering sales agents and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) (a) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, for promotion of the lottery, for the sale of tickets, chances, wagers, and bets, and for other services. The state shall provide for management, security, and internal audit control.

(b) When a contract is awarded, a performance bond satisfactory to and in an amount determined by the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission must be delivered to the commission. The requirements for this bond must be at least as stringent as those stated in 18-4-312(3).

History: En. Sec. 7, Ch. 669, L. 1985; Sec. 23-5-1012, MCA 1989; redes. 23-7-211 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 1, Ch. 24, L. 1993; amd. Sec. 1, Ch. 359, L. 1995; amd. Sec. 129, Ch. 42, L. 1997; amd. Sec. 10, Ch. 284, L. 2019.

Cross-References

Public contracts generally, Title 18, ch. 1.

23-7-212. Assistant director for security — qualifications — duties. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security:

(a) must be responsible for a security division to ensure security, honesty, fairness, and integrity in the operation and administration of the state lottery, including but not limited to an examination of the background of all prospective employees, sales agents, lottery and sports wagering vendors, and contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) shall, in conjunction with the director, confer with the attorney general or the attorney general's designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the state lottery and establish a memorandum of understanding that contemplates investigatory and regulatory collaboration and assistance between the department of justice and the state lottery as considered necessary by both parties; and

(c) shall, in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

History: En. Sec. 8, Ch. 669, L. 1985; amd. Sec. 3, Ch. 161, L. 1987; Sec. 23-5-1013, MCA 1989; redes. 23-7-212 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 374, Ch. 56, L. 2009; amd. Sec. 11, Ch. 284, L. 2019; amd. Sec. 3, Ch. 335, L. 2021.

Part 3
Sales and Regulation

23-7-301. Sales agents — licenses. (1) Lottery tickets, chances, wagers, or bets may be sold only by a sales agent licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery games and sports wagering tickets, chances, wagers, or bets may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and the applicant's business or activity;

(ii) the accessibility of the applicant's place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) A person under 18 years of age may not sell lottery tickets, chances, wagers, or bets.

(c) A license as an agent to sell lottery tickets, chances, or wagers and bets may not be issued to any person to engage in business exclusively as a lottery ticket, chance, or sports wagering sales agent.

(d) A license as an agent to sell wagers or bets may not be issued to any professional or collegiate sports:

(i) athlete;

(ii) coach;

(iii) assistant coach;

(iv) team staff;

(v) team owner;

(vi) referee; or

(vii) employee.

(4) The director may issue temporary licenses upon conditions that the director considers necessary.

(5) (a) Two license types are available:
(i) lottery only; and
(ii) sports wagering only.

(b) License applicants shall complete the application process pursuant to this chapter and corresponding administrative rules.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display the license or a copy of the license conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a sales agent may not be required to sell lottery game tickets, chances, or wagers or bets if the sale is against the employee's religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return and no more than 10% of the face value of a wager or bet. However, to further the sale of lottery products and sports wagering, the state lottery and sports wagering commission may, under 23-7-202(11), establish policies that provide additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing the agent's sales and provide it for inspection upon request of the commission, the director, the department of administration, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

History: En. Sec. 9, Ch. 669, L. 1985; amd. Sec. 1, Ch. 342, L. 1989; amd. Sec. 4, Ch. 408, L. 1989; Sec. 23-5-1016, MCA 1989; redes. 23-7-301 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 130, Ch. 42, L. 1997; amd. Sec. 59, Ch. 483, L. 2001; amd. Sec. 12, Ch. 284, L. 2019; amd. Sec. 3, Ch. 15, L. 2023.

23-7-302. Sales restrictions. (1) The price of each lottery game ticket, chance, wager, or bet must be clearly stated on the ticket, chance, wager, or bet. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets, chances, wagers, or bets may not be sold to or purchased by persons under 18 years of age.

(3) Tickets, chances, wagers, or bets may not be purchased on credit. Tickets, chances, wagers, or bets may be purchased only with cash, check, or debit card and may not be purchased on credit. The use of a debit card is limited to the daily withdrawal amount of the issuing debit card lending institution.

(4) Tickets, chances, wagers, or bets may not be sold to or purchased by commissioners, the director, the director's staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket, chance, wager, or bet.

History: En. Sec. 10, Ch. 669, L. 1985; amd. Sec. 9, Ch. 161, L. 1987; amd. Sec. 5, Ch. 408, L. 1989; Sec. 23-5-1017, MCA 1989; redes. 23-7-302 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 18, Ch. 398, L. 1993; amd. Sec. 375, Ch. 56, L. 2009; amd. Sec. 13, Ch. 284, L. 2019.

23-7-303 and 23-7-304 reserved.

23-7-305. Disclosure of odds. The director shall make adequate disclosure of the odds or payoffs with respect to each state lottery game or sports wager by stating how to find the odds or payoffs in advertisements and by posting how to find the odds or payoffs at each place in which tickets, chances, wagers, or bets are sold.

History: **En. Sec. 11, Ch. 669, L. 1985; Sec. 23-5-1018, MCA 1989; redes. 23-7-305 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 14, Ch. 284, L. 2019.**

23-7-306. Felony and gambling-related convictions — ineligibility for lottery or sports wagering positions. A person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may not be a commissioner, director, assistant director, employee of the state lottery, or licensed sales agent. To determine a person's suitability for the position of commissioner, director, assistant director, or employee of the state lottery, the person shall submit the person's fingerprints to the department of justice. The department shall examine the fingerprints, and if a disqualifying record is not found, the department shall forward the fingerprints to the federal bureau of investigation for a national criminal history check. This section applies to lottery tickets, chances, wagers, and bets.

History: **En. Sec. 14, Ch. 669, L. 1985; amd. Sec. 6, Ch. 408, L. 1989; Sec. 23-5-1019, MCA 1989; redes. 23-7-306 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 1, Ch. 107, L. 2003; amd. Sec. 15, Ch. 284, L. 2019.**

23-7-307. Conflict of interest. A commissioner, director, assistant director, state lottery employee, licensed sales agent, or member of a listed person's household may not have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

History: **En. Sec. 15, Ch. 669, L. 1985; amd. Sec. 7, Ch. 408, L. 1989; Sec. 23-5-1020, MCA 1989; redes. 23-7-307 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 376, Ch. 56, L. 2009; amd. Sec. 16, Ch. 284, L. 2019.**

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

23-7-308 and 23-7-309 reserved.

23-7-310. Disclosures by gaming suppliers. (1) A person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery or sports wagering equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of the bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation. However, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed.

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved with the subsidiary company and the officers, directors, and stockholders of each. However, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed.

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this chapter.

(2) A person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may not have any financial interest in any person, firm, association, or corporation licensed as a sales agent.

(3) A contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is not enforceable against the state unless the requirements of this section have been fulfilled.

History: En. Sec. 17, Ch. 669, L. 1985; amd. Sec. 6, Ch. 161, L. 1987; Sec. 23-5-1021, MCA 1989; redes. 23-7-310 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 2, Ch. 107, L. 2003; amd. Sec. 17, Ch. 284, L. 2019.

23-7-311. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets, chances, wagers, or bets may not be performed by an employee of the state lottery or by a member of the commission. All drawings may be witnessed by a professional staff employee of the legislative auditor's office, and all state lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff prior to and after each public drawing.

(2) The commission may by rule provide for the payment of prizes by sales agents, whether or not the paying agent sold the winning ticket, chance, wager, or bet whenever the amount of the prize is less than an amount set by commission rule.

(3) (a) Except as provided in subsection (3)(b), lottery jackpot prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than $20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a lottery game for prizes of over $100,000 that requires payment periods of more than 20 years or yearly installment payments of less than $20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

History: En. Sec. 16, Ch. 669, L. 1985; amd. Sec. 5, Ch. 161, L. 1987; Sec. 23-5-1022, MCA 1989; redes. 23-7-311 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 1, Ch. 25, L. 1993; amd. Sec. 1, Ch. 19, L. 1995; amd. Sec. 1, Ch. 40, L. 2011; amd. Sec. 18, Ch. 284, L. 2019.

23-7-312. Lien on lottery and sports wagering winnings for debt collected by IV-D agency — notice to agency — payment to agency — procedure. (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery or sports wagering winnings in excess of the amount set by the commission, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall make a good faith attempt to notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. The state lottery has no liability to the IV-D agency or the individual on whose

behalf the IV-D agency is collecting the debt if the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery's notification of a match.

(b) If the winnings are to be paid through the state treasurer, the winner is entitled to notice and opportunity for hearing under Title 17, chapter 4, part 1, prior to any offset of the debt against the winnings.

(c) If the winnings are to be paid directly by the state lottery, the amount of the debt owed to or collected by the IV-D agency must be held by the state lottery for a period of 30 days from the state lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the state lottery shall release the payment to the winner.

(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law.

History: En. Sec. 1, Ch. 429, L. 1993; amd. Sec. 26, Ch. 325, L. 1995; amd. Sec. 19, Ch. 284, L. 2019.

Cross-References

Enforcement of support, Title 40, ch. 5.

23-7-313. Confidentiality of players. The personal information about a player who participates in lottery games and sports gambling as provided in this chapter is confidential and may not be disclosed to the public unless the player authorizes, in writing, the release of the information. Nothing in this section prohibits:

(1) the state lottery from complying with 23-7-312; and

(2) disclosure of the information through an order issued by a court of competent jurisdiction on a finding that the disclosure of the personal information is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

History: En. Sec. 1, Ch. 116, L. 2021.

23-7-314. Repealed. Sec. 2, Ch. 697, L. 2023; Sec. 3, Ch. 697, L. 2023.

History: En. Sec. 1, Ch. 567, L. 2021.

Part 4
Finances and Audits

23-7-401. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets, chances, wagers, and bets, sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from the agent's gross revenue before depositing the gross revenue with the state lottery.

History: En. Sec. 12, Ch. 669, L. 1985; Sec. 23-5-1026, MCA 1989; redes. 23-7-401 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 377, Ch. 56, L. 2009; amd. Sec. 20, Ch. 284, L. 2019.

23-7-402. Disposition of revenue. (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the state lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 in the following order:

(a) the first $2.25 million of net revenue in each fiscal year must be transferred quarterly in equal payments of $562,500 to the Montana STEM scholarship program special revenue account established in 20-26-617; and

(b) net revenue in excess of $2.25 million in each fiscal year must be transferred to the state general fund.

(4) The spending authority of the state lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.

History: En. Sec. 13, Ch. 669, L. 1985; amd. Sec. 4, Ch. 161, L. 1987; amd. Secs. 5, 7, Ch. 635, L. 1987; amd. Sec. 1, Ch. 206, L. 1989; amd. Sec. 8, Ch. 408, L. 1989; amd. Sec. 5, Ch. 628, L. 1989; amd. Sec. 44, Ch. 11, Sp. L. June 1989; Sec. 23-5-1027, MCA 1989; redes. 23-7-402 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 16, Ch. 799, L. 1991; amd. Sec. 1, Ch. 461, L. 1993; amd. Sec. 46, Ch. 509, L. 1995; amd. Sec. 6, Ch. 494, L. 1997; amd. Sec. 1, Ch. 2, L. 2013; amd. Sec. 13, Ch. 385, L. 2015; amd. Sec. 21, Ch. 284, L. 2019; amd. Secs. 15, 16, Ch. 300, L. 2019.

Cross-References

State grants for youth detention services, Title 41, ch. 5, part 19.

23-7-403 through 23-7-409 reserved.

23-7-410. Annual audit. The legislative auditor shall conduct or have conducted an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and the legislature in accordance with 5-11-210.

History: En. Sec. 18, Ch. 669, L. 1985; amd. Sec. 9, Ch. 408, L. 1989; Sec. 23-5-1028, MCA 1989; redes. 23-7-410 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 63, Ch. 261, L. 2021.

23-7-411. Audit of state lottery security. (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the state lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

(a) personnel security;

(b) lottery sales agent security;

(c) lottery contractor security;

(d) security of manufacturing operations of state lottery contractors;

(e) security against ticket, chance, wager, or bet counterfeiting and alteration and other means of fraudulently winning;

(f) security of drawings among entries or finalists;

(g) computer security;

(h) data communications security;

(i) database security;

(j) systems security;

(k) lottery premises and warehouse security;

(l) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game and sports wager;

(p) security of drawings in games whenever winners are determined by drawings;

(q) the completeness of security against locating winners in state lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game or sports wager and to the state lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

History: En. Sec. 19, Ch. 669, L. 1985; Sec. 23-5-1029, MCA 1989; redes. 23-7-411 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 22, Ch. 284, L. 2019.

23-7-412. Certain audit findings confidential. Specific audit findings relating to security invasion techniques are confidential and may be reported only to the legislative audit committee, the director of the lottery, the commission, the attorney general, and the governor.

History: En. Sec. 8, Ch. 161, L. 1987; Sec. 23-5-1030, MCA 1989; redes. 23-7-412 by Sec. 57, Ch. 647, L. 1991.

(b) net revenue in excess of $2.25 million in each fiscal year must be transferred to the state general fund.

(4) The spending authority of the state lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.

History: En. Sec. 18, Ch. 669, L. 1985; amd. Sec. 4, Ch. 161, L. 1987; amd. Secs. 5, 7, Ch. 636, L. 1987; amd. Sec. 1, Ch. 206, L. 1989; amd. Sec. 8, Ch. 408, L. 1989; amd. Sec. 5, Ch. 628, L. 1989; amd. Sec. 44, Ch. 11, Sp. L. June 1989; Sec. 23-5-1027, MCA 1989; redes. 23-7-402 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 16, Ch. 788, L. 1991; amd. Sec. 1, Ch. 401, L. 1993; amd. Sec. 46, Ch. 509, L. 1995; amd. Sec. 6, Ch. 494, L. 1997; amd. Sec. 1, Ch. 2, L. 2013; amd. Sec. 13, Ch. 385, L. 2015; amd. Sec. 21, Ch. 284, L. 2019; amd. Secs. 15, 16, Ch. 300, L. 2019.

Cross-References

State grants for youth detention services, Title 41, ch. 5, part 19.

23-7-403 through 23-7-409 reserved.

23-7-410. Annual audit. The legislative auditor shall conduct or have conducted an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and the legislature in accordance with 5-11-210.

History: En. Sec. 15, Ch. 669, L. 1985; amd. Sec. 9, Ch. 408, L. 1989; Sec. 23-5-1028, MCA 1989; redes. 23-7-410 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 63, Ch. 261, L. 2021.

23-7-411. Audit of state lottery security. (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the state lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

(a) personnel security;

(b) lottery sales agent security;

(c) lottery contractor security;

(d) security of manufacturing operations of state lottery contractors;

(e) security against ticket, chance, wager, or bet counterfeiting and alteration and other means of fraudulently winning;

(f) security of drawings among entries or finalists;

(g) computer security;

(h) data communications security;

(i) database security;

(j) systems security;

(k) lottery premises and warehouse security;

(l) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game and sports wager;

(p) security of drawings in games whenever winners are determined by drawings;

(q) the completeness of security against locating winners in state lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game or sports wager and to the state lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

History: En. Sec. 19, Ch. 669, L. 1985; Sec. 23-5-1029, MCA 1989; redes. 23-7-411 by Sec. 57, Ch. 647, L. 1991; amd. Sec. 22, Ch. 284, L. 2019.

23-7-412. Certain audit findings confidential. Specific audit findings relating to security intrusion techniques are confidential and may be reported only to the legislative audit committee, the director of the lottery, the commission, the attorney general, and the governor.

History: En. Sec. 8, Ch. 161, L. 1987; Sec. 23-5-1030, MCA 1989; redes. 23-7-412 by Sec. 57, Ch. 647, L. 1991.

TITLE 24

RESERVED

TITLE 25

CIVIL PROCEDURE

Ch.

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3. Service of Process and Other Papers.
4. Pleadings, Motions, and Other Papers.
5. Parties.
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7. Trials.
8. Deposit in Court — Delivery to Party.
9. Judgment.
10. Costs.
11. New Trial.
12. Appeal to Supreme Court.
13. Execution of Judgment.
14. Proceedings in Aid of Execution.
15. Liability of Joint Debtors.
Chapters 16 through 18 reserved.
19. Uniform District Court Rules.
20. Rules of Civil Procedure.
21. Rules of Appellate Procedure.
22. Montana Justice Courts — Rules of Civil Procedure.
23. Montana Justice and City Court Rules of Civil Procedure.
24. Montana Uniform Rules for the Justice and City Courts.
Chapters 25 through 29 reserved.
30. Procedure in Municipal Courts.
31. Procedure in Justices' Courts.
32. Procedure in City Courts. Repealed.
33. Appeal to District Court From Justices' and City Courts.
34. Small Claims Procedure — District Court. Repealed.
35. Small Claims Procedure — Justice's Court.
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CHAPTER 1

GENERAL PROVISIONS

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25-1-1108 through 25-1-1110 reserved.
25-1-1111. Bond required — levy limited.
25-1-1112. Action on bond.

Chapter Cross-References

State courts open to every person, Art. II, sec. 16, Mont. Const.
Right and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.
Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.
Commission for Human Rights, 2-15-1706.
Illegal discrimination, Title 49, ch. 2.
General powers and duties of Commission, Title 49, ch. 2, part 2.

Part 1
Civil Actions — Form and Commencement

25-1-101. One form of civil action. There is in this state but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.

History: En. Sec. 1, p. 43, Bannack Stat.; amd. Sec. 1, p. 135, L. 1867; amd. Sec. 1, p. 28, Cod. Stat. 1871; re-en. Sec. 1, p. 40, L. 1877; re-en. Sec. 1, 1st Div. Rev. Stat. 1879; re-en. Sec. 1, 1st Div. Comp. Stat. 1887; amd. Sec. 460, C. Civ. Proc. 1895; re-en. Sec. 6425, Rev. C. 1907; re-en. Sec. 9008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 307; re-en. Sec. 9008, R.C.M. 1935; R.C.M. 1947, 93-2301.

Cross-References

Actions and special proceedings defined, 27-1-102.
Civil and criminal actions, 27-1-103.
Bases for civil actions, 27-1-104.

25-1-102. Limitations on commencing actions. (1) Civil actions can only be commenced within the periods prescribed in Title 27, chapter 2, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

(2) The word "action", as used in this section, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, p. 466, Bannack Stat.; re-en. Sec. 1, p. 515, Cod. Stat. 1871; re-en. Sec. 28, p. 45, L. 1877; re-en. Sec. 28, 1st Div. Rev. Stat. 1879; re-en. Sec. 28, 1st Div. Comp. Stat. 1887; re-en. Sec. 470, C. Civ. Proc. 1895; re-en. Sec. 6428, Rev. C. 1907; re-en. Sec. 9011, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 312; re-en. Sec. 9011, R.C.M. 1935; Sec. 93-2401, R.C.M. 1947; (2)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2401, 93-2720; amd. Sec. 79, Ch. 575, L. 1981.

Cross-References

Definition of special proceeding, 27-1-102.
Statutes of limitations, Title 27, ch. 2.
Uniform Conflict of Laws—Limitations Act, Title 27, ch. 2, part 5.

25-1-103. When action considered pending. An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied.

History: En. Sec. 1895, C. Civ. Proc. 1895; re-en. Sec. 7188, Rev. C. 1907; re-en. Sec. 9821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1049; re-en. Sec. 9821, R.C.M. 1935; R.C.M. 1947, 93-8706.

Cross-References

Execution of judgment, Title 25, ch. 13.
Execution of judgment in Justice's Court, Title 25, ch. 31, part 11.
Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.

25-1-104. Failure to prosecute — dismissal on initiative of court. In a district court action in which it appears on the face of the record that activity by filing of pleadings, order of court, or otherwise has not occurred for a period of 2 years and no stay has been issued or approved by the court, the court or, if the court does not act, the clerk of court shall serve notice of lack of prosecution to each party at the party's last-known address. If a pleading, order, or other activity does not occur within the 60-day period following the service of the notice and if a stay is not issued or approved during the 60-day period, the court shall, on its own motion and without further notice or hearing, dismiss the action without prejudice.

History: En. Sec. 1, Ch. 17, L. 2011.

25-1-105 through 25-1-110 reserved.

25-1-111. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1931, C. Civ. Proc. 1895; re-en. Sec. 7201, Rev. C. 1907; re-en. Sec. 9835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1064; re-en. Sec. 9835, R.C.M. 1935; R.C.M. 1947, 93-8802.

Part 2
Fees

25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $170; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $50;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, $1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, $5, and for a copy of a dissolution decree, $10;

(iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, $2 for each name for each year searched, for a period of up to 7 years, and an additional $1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $25;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license:

(i) when one or both parties to the marriage are present at the solemnization, $53;

(ii) when neither party is present at the solemnization, $83;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $53;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75;

(r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, $5 must be deposited in the children's trust fund account established in 52-7-102, $19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, $5 must be deposited in the children's trust fund account established in 52-7-102 and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) and $20 collected under (1)(i) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, $13 must be deposited in the domestic violence intervention account established by 44-7-202 and $10 must be deposited in the county district court fund, except that $30 must be deposited in the county district court fund when neither party to a marriage is present at the solemnization. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R.C.M. 1921; re-en. Sec. 4918, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1967; amd. Sec. 1, Ch. 33, L. 1977; amd. Sec. 1, Ch. 548, L. 1977; R.C.M. 1947, 25-232; amd. Sec. 1, Ch. 493, L. 1981; amd. Sec. 80, Ch. 575, L. 1981; amd. Sec. 1, Ch. 10, L. 1983; amd. Sec. 1, Ch. 12, L. 1983; amd. Sec. 1, Ch. 524, L. 1983; amd. Sec. 11, Ch. 709, L. 1983; amd. Sec. 7, Ch. 610, L. 1985; amd. Sec. 1, Ch. 271, L. 1987; amd. Sec. 1, Ch. 318, L. 1987; amd. Sec. 1, Ch. 642, L. 1987; amd. Sec. 1, Ch. 645, L. 1987; amd. Sec. 1, Ch. 221, L. 1989; amd. Sec. 4, Ch. 664, L. 1989; amd. Secs. 3, 4, Ch. 656, L. 1991; amd. Sec. 1, Ch. 570, L. 1993; amd. Sec. 37, Ch. 287, L. 1997; amd. Sec. 1, Ch. 343, L. 1997; amd. Sec. 160, Ch. 480, L. 1997; amd. Sec. 1, Ch. 484, L. 1997; amd. Sec. 1, Ch. 386, L. 1999; amd. Sec. 1, Ch. 545, L. 1999; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 26, Ch. 585, L. 2001; amd. Sec. 12, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 100, L. 2003; amd. Sec. 2, Ch. 408, L. 2005. amd. Sec. 9, Ch. 493, L. 2005; amd. Sec. 2, Ch. 344, L. 2013; amd. Sec. 3, Ch. 456, L. 2021; amd. Sec. 1, Ch. 569, L. 2021; amd. Sec. 1, Ch. 587, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 587, L. 2025. Amendment effective October 1, 2025.

Cross-References

Duties of Clerk, Title 3, ch. 5, part 5.
Justices' Courts — collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Fees for transfer of court records, 7-2-2412.
Membership in associations of Clerks of District Courts, 7-5-2143.
Manner of appearance by defendant, 25-3-401.
Governmental entities not required to prepay fees — exceptions, 25-10-405.
Public officers not to be personally taxed, 25-10-701.
Municipal Court — fees and fines — collection, 25-30-102.
Mandamus — officers not to be personally liable, 27-26-403.
Payment of marriage license fee, 40-1-202.
Justices' Courts — deposit of fines, 46-17-303.
Municipal Court — fees and fines — collection, 46-17-402.
Fines in felony and misdemeanor cases, 46-18-231.
Surcharge upon criminal conviction or forfeiture, 46-18-236.
Allocation of fines, costs, restitution, and other charges, 46-18-251.

25-1-202. Additional filing fees. (1) In addition to other filing fees, the following fees must be paid to the clerk of the district court at the time of filing a civil action in the district court:

(a) a fee of $20; and

(b) if the action is brought pursuant to 40-6-701, in addition to the fee required under subsection (1)(a), a fee of $6.

(2) The fees must be forwarded by the clerk to the department of revenue for deposit in the state general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements.

History: En. Sec. 1979, 5th Div. Comp. Stat. 1887; re-en. Sec. 374, C. Civ. Proc. 1895; re-en. Sec. 6377, Rev. C. 1907; re-en. Sec. 8932, R.C.M. 1921; re-en. Sec. 8932, R.C.M. 1935; amd. Sec. 5, Ch. 22, L. 1961; R.C.M. 1947, 93-1905; amd. Sec. 3, Ch. 640, L. 1989; amd. Sec. 2, Ch. 384, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 27, Ch. 585, L. 2001; amd. Sec. 2, Ch. 502, L. 2021; amd. Sec. 5, Ch. 693, L. 2023.

Cross-References

Court reporters, Title 3, ch. 5, part 6.
Collection and disposition of fines, penalties, forfeitures, and fees — Justices' Courts, 3-10-601.
Fees for transfer of court records, 7-2-2412.
Costs generally allowable, 25-10-201.
Claiming costs, Title 25, ch. 10, part 5.
Costs allowable against state, 25-10-702, 25-10-711.
Fees and fines — collection — Municipal Courts, 25-30-102.
Costs allowed in Municipal Court, 25-30-107.
Bill of costs unnecessary in Justice's Court, 25-31-1002.
Deposit of fines — collection — Justices' and City Courts, 46-17-303.
Fees and fines — collection — Municipal Court, 46-17-402.
Fines in felony and misdemeanor cases, 46-18-231.
Imposition of charge upon conviction or forfeiture — administration, 46-18-236.
Allocation of fines, costs, restitution, and other charges, 46-18-251.

Part 3
Time

25-1-301. Extension of time. Subject to Rule 6(b), M.R.Civ.P., whenever this code requires or allows an act to be done at or within a specified time, which act relates to the pleadings in the action, the undertakings to be filed, the justification of sureties, the preparation of statements or of amendments thereto, or the service of notices other than of appeal, the time allowed by this code may be extended, upon good cause shown, by the court in which the action is pending or a judge thereof; but such extension shall not exceed 90 days without the consent of the adverse party.

History: En. Sec. 1897, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 27, L. 1903; re-en. Sec. 7190, Rev. C. 1907; re-en. Sec. 9823, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1054; re-en. Sec. 9823, R.C.M. 1935; R.C.M. 1947, 93-8708; amd. Sec. 82, Ch. 575, L. 1981.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Part 4
Undertakings for Security

25-1-401. Deposit of money in lieu of undertaking. In all cases in which an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court, justice of the peace, or city judge, as appropriate, a sum of money equal to the amount required by the undertaking or bond, which must be taken as security in the place of the undertaking or bond. At any time, the deposit may be withdrawn by the party making it upon giving the undertaking with sufficient sureties as required by law, approved by the clerk, justice, or judge, upon notice to the adverse party or the adverse party's attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance.

History: En. Sec. 1904, C. Civ. Proc. 1895; re-en. Sec. 7198, Rev. C. 1907; re-en. Sec. 9831, R.C.M. 1921; re-en. Sec. 9831, R.C.M. 1935; R.C.M. 1947, 93-8716; amd. Sec. 378, Ch. 56, L. 2009.

Cross-References

Security for costs, Title 25, ch. 10, part 6.
Money in lieu of undertaking in Justice's Court, 25-31-115.
Security for costs in Justice's Court, 25-31-402.

25-1-402. Governmental entities not required to give security. In any civil action or proceeding in which the state, a county, or a municipal corporation or any officer in the officer's official capacity on behalf of the state or a county, city, or town is a party plaintiff or defendant, a bond, undertaking, or security may not be required of the state, county, municipal corporation, or town or any officer of those entities; however, on complying with the other provisions of this code, the state, county, municipal corporation, or town or any officer acting in the officer's official capacity has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. The board of trustees of any school district is entitled to the benefit of this section.

History: **En. Sec. 1902, C. Civ. Proc. 1895; re-en. Sec. 7196, Rev. C. 1907; re-en. Sec. 9829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1058; re-en. Sec. 9829, R.C.M. 1935; R.C.M. 1947, 93-8714; amd. Sec. 379, Ch. 56, L. 2009.**

Cross-References

Community college included as school district, 20-15-403.
Governmental entities not required to prepay fees — exception, 25-10-405.
Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Part 5
Notice to Attorney General

Part Cross-References

Service of process on state, 2-9-313.
Duties of Governor and Attorney General, 2-15-201, 2-15-501.
Necessary parties, 27-8-301.

25-1-501. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: **En. Sec. 1, Ch. 91, L. 1979.**

25-1-502. Notice of appeal to be served on attorney general when state is party to judicial review. (1) If the state or a department, officer, or board of the state appeals from a judgment or order entered in any court or files a petition for a writ seeking review of a matter in any appellate court, the attorney representing the state, department, officer, or board shall notify the attorney general within a reasonable time in advance of the filing of the notice or petition. The attorney shall serve a copy of the notice of appeal or of the petition on the attorney general and provide the attorney general on request a copy of the order, judgment, or opinion for which review is sought.

(2) If a notice of appeal or petition for a writ seeking review in any appellate court is served upon the state or a department, officer, or board of the state, the party serving the notice or petition shall serve a copy on the attorney general as well as on any other counsel required by law to be served.

History: **En. Sec. 2, Ch. 91, L. 1979; amd. Sec. 1, Ch. 535, L. 2001.**

Parts 6 through 10 reserved

Part 11
Registration of Process Servers — Levying Officers

Part Cross-References

Service of process and other papers, Title 25, ch. 3.
Execution by elisor, 25-3-206.
Obstructing peace officer or other public servant, 45-7-302.

25-1-1101. Registered process server — levying officer — use of title reserved. (1) Except as provided in subsection (2), a person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the department of labor and industry, and the department shall exchange that registration certificate for a new certificate that expires on March 31, 2009.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) A registered process server may make service of process in any county in this state.

(5) A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60.

History: En. Sec. 1, Ch. 548, L. 1987; amd. Sec. 2, Ch. 392, L. 2005; amd. Sec. 2, Ch. 405, L. 2007; amd. Sec. 16, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 16, Ch. 53, L. 2025. Amendment effective October 1, 2025.

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform the duties as a process server in compliance with the provisions of law governing the service of process in this state.

History: En. Sec. 2, Ch. 548, L. 1987; amd. Sec. 380, Ch. 56, L. 2009.

25-1-1103. Repealed. Sec. 20, Ch. 405, L. 2007.

History: En. Sec. 3, Ch. 548, L. 1987; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 28, Ch. 585, L. 2001.

25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) The department of labor and industry shall develop and administer an examination for applicants for registration as a process server based on the handbook.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

History: En. Sec. 4, Ch. 548, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 60, Ch. 483, L. 2001; amd. Sec. 3, Ch. 405, L. 2007; amd. Sec. 5, Ch. 502, L. 2007; amd. Sec. 1, Ch. 481, L. 2023.

25-1-1105. Repealed. Sec. 20, Ch. 405, L. 2007.

History: En. Sec. 5, Ch. 548, L. 1987.

25-1-1106. Repealed. Sec. 20, Ch. 405, L. 2007.

History: En. Sec. 8, Ch. 548, L. 1987.

25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must include the process server's registration number.

History: En. Sec. 9, Ch. 548, L. 1987; amd. Sec. 4, Ch. 405, L. 2007.

25-1-1108 through 25-1-1110 reserved.

25-1-1111. Bond required — levy limited. (1) After completing the requirements in Title 37, chapter 60, for registration, a process server shall provide the department of labor and industry with proof of a surety bond of $10,000 for an individual or $100,000 for a firm, conditioned upon compliance with this part, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

History: En. Sec. 6, Ch. 548, L. 1987; amd. Sec. 5, Ch. 405, L. 2007; amd. Sec. 17, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 17, Ch. 53, L. 2025. Amendment effective October 1, 2025.

25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) If there has been recovery against a registered process server's bond, the registered process server shall file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the department of labor and industry shall revoke the process server's registration within a timeframe established by rule.

History: En. Sec. 7, Ch. 548, L. 1987; amd. Sec. 6, Ch. 405, L. 2007; amd. Sec. 18, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 18, Ch. 53, L. 2025. Amendment effective October 1, 2025.

CHAPTER 2
VENUE

Part 1 — Proper Place of Trial — Venue

25-2-101. Renumbered 25-2-121.
25-2-102. Renumbered 25-2-122.
25-2-103. Renumbered 25-2-123.
25-2-104. Renumbered 25-2-124.
25-2-105. Renumbered 25-2-125.
25-2-106. Renumbered 25-2-126(2).
25-2-107. Repealed.
25-2-108. Renumbered 25-2-118.
25-2-109 and 25-2-110 reserved.
25-2-111. Scope of part.
25-2-112. Designation of proper place of trial not jurisdictional.
25-2-113. Power of court to change place of trial.
25-2-114. Right of defendant to move for change of place of trial.
25-2-115. Multiple proper counties.
25-2-116. Multiple claims.
25-2-117. Multiple defendants.
25-2-118. Residence of defendant.
25-2-119 and 25-2-120 reserved.
25-2-121. Contracts.
25-2-122. Torts.
25-2-123. Real property.
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25-2-126. Against state and political subdivisions.
25-2-127. Challenge to recently enacted law.
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25-2-131. Specific statutes control.

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25-2-201. When change of venue required.
25-2-202. Change of venue on agreement of parties.
25-2-203. Papers to be transmitted.
25-2-204. Jurisdiction preserved.
25-2-205. Repealed.
25-2-206. Judgment affecting real property to be transmitted.

Part 1
Proper Place of Trial — Venue

Part Cross-References

Terms and location of District Courts, Title 3, ch. 5, part 4.

25-2-101. Renumbered 25-2-121. Code Commissioner, 1985.

25-2-102. Renumbered 25-2-122. Code Commissioner, 1985.

25-2-103. Renumbered 25-2-123. Code Commissioner, 1985.

25-2-104. Renumbered 25-2-124. Code Commissioner, 1985.

25-2-105. Renumbered 25-2-125. Code Commissioner, 1985.

25-2-106. Renumbered 25-2-126(2). Code Commissioner, 1985.

25-2-107. Repealed. Sec. 17, Ch. 432, L. 1985.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part).

25-2-108. Renumbered 25-2-118. Code Commissioner, 1985.

25-2-109 and 25-2-110 reserved.

25-2-111. Scope of part. The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

History: **En. Sec. 1, Ch. 432, L. 1985.**

25-2-112. Designation of proper place of trial not jurisdictional. The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

History: **En. Sec. 2, Ch. 432, L. 1985.**

Cross-References

Original jurisdiction of Supreme Court, 3-2-202.
Original jurisdiction of District Courts, 3-5-302.
Jurisdiction of Municipal Courts and Justices' Courts, 3-6-103; Title 3, ch. 10, part 3.
Jurisdiction of Water Courts, 3-7-224; Title 3, ch. 7, part 5.
Jurisdiction of City Courts, Title 3, ch. 11, part 1.

25-2-113. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

History: **En. Sec. 3, Ch. 432, L. 1985.**

25-2-114. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

History: **En. Sec. 4, Ch. 432, L. 1985.**

25-2-115. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

History: **En. Sec. 5, Ch. 432, L. 1985.**

25-2-116. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

History: **En. Sec. 6, Ch. 432, L. 1985.**

25-2-117. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

History: **En. Sec. 7, Ch. 432, L. 1985.**

25-2-118. Residence of defendant. (1) Except as provided in 25-2-127 and subsection (3) of this section, the proper place of trial for all civil actions is the county in which the defendants or any of them reside at the commencement of the action.

(2) If none of the defendants reside in the state, the proper place of trial for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3).

(3) The proper place of trial for an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner or the respondent has resided during the 90 days preceding the filing of the action.

History: **En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ.**

Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 8, Ch. 432, L. 1985; sec. 25-2-108, MCA 1983; redes. 25-2-118 by Code Commissioner, 1985; amd. Sec. 1, Ch. 352, L. 1997; amd. Sec. 1, Ch. 314, L. 2003; amd. Sec. 2, Ch. 357, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 357, L. 2025. Amendment effective October 1, 2025.

Cross-References

Rules for determination of residence, 1-1-215.

25-2-119 and 25-2-120 reserved.

25-2-121. Contracts. (1) The proper place of trial for actions upon contracts is either:

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed. The county in which the contract was to be performed is:

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurred or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 9, Ch. 432, L. 1985; sec. 25-2-101, MCA 1983; redes. 25-2-121 by Code Commissioner, 1985.

25-2-122. Torts. (1) Except as provided in subsections (2) through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) Except as provided in subsection (4), if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) Except as provided in subsection (4), if the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) If the defendant is a railroad, as defined in 69-14-102, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 10, Ch. 432, L. 1985; sec.

25-2-102, MCA 1983; redes. 25-2-122 by Code Commissioner, 1985; amd. Sec. 1, Ch. 332, L. 1995; amd. Sec. 2, Ch. 352, L. 1997; amd. Sec. 1, Ch. 217, L. 2005; amd. Sec. 4, Ch. 104, L. 2015.

25-2-123. Real property. (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: (1), (2)En. Sec. 18, p. 46, Bannack Stat.; en. Sec. 18, p. 137, L. 1867; re-en. Sec. 23, p. 30, Cod. Stat. 1871; re-en. Sec. 56, p. 51, L. 1877; re-en. Sec. 56, 1st Div. Rev. Stat. 1879; re-en. Sec. 56, 1st Div. Comp. Stat.1887; re-en. Sec. 610, C. Civ. Proc. 1895; re-en. Sec. 6501, Rev. C. 1907; re-en. Sec. 9093, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 392; re-en. Sec. 9093, R.C.M. 1935; Sec. 93-2901, R.C.M. 1947; (3)En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; Sec. 93-320, R.C.M. 1947; R.C.M. 1947, 93-320(part), 93-2901; amd. Sec. 11, Ch. 432, L. 1985; sec. 25-2-103, MCA 1983; redes. 25-2-123 by Code Commissioner, 1985.

Cross-References

Quieting title to real property, Title 70, ch. 28.
Partition of real property, Title 70, ch. 29.
Definition of foreclosure, 71-1-221.

25-2-124. Recovery of statutory penalty or forfeiture. The proper place of trial for the recovery of a penalty or forfeiture imposed by statute is the county where the cause or some part thereof arose, except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 12, Ch. 432, L. 1985; sec. 25-2-104, MCA 1983; redes. 25-2-124 by Code Commissioner, 1985.

25-2-125. Against public officers or their agents. Except as provided in 25-2-127, the proper place of trial for an action against a public officer or person specially appointed to execute the officer's duties for an act done by the officer or person in virtue of the office or against a person who, by the officer's or person's command or in the officer's or person's aid, does anything relating to the duties of the officer is the county where the cause or some part of the cause of action arose.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 13, Ch. 432, L. 1985; sec. 25-2-105, MCA 1983; redes. 25-2-125 by Code Commissioner, 1985; amd. Sec. 381, Ch. 56, L. 2009; amd. Sec. 3, Ch. 357, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 357, L. 2025. Amendment effective October 1, 2025.

Cross-References

Bonds of public officers and employees, Title 2, ch. 9, parts 6 through 8.

25-2-126. Against state and political subdivisions. (1) Except as provided in 25-2-127 and subsection (2) of this section, the proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and Clark County. In an action against the state brought by a resident of the state, the county of the plaintiff's residence is also a proper place of trial.

(2) For an action that challenges the issuance, approval, renewal, or denial of a permit, license, authorization, or certificate by a state agency, the action must be brought in the county in which the permitted, licensed, authorized, or certificated activity would occur. If an activity would occur in more than one county, any county in which the activity would occur is a proper place for an action.

(3) The proper place of trial for an action against a political subdivision is in the county in which the claim arose or in any county where the political subdivision is located.

History: (1), (3)En. Sec. 21, Ch. 380, L. 1973; R.C.M. 1947, 82-4321; amd. Sec. 15, Ch. 432, L. 1985; sec. 2-9-312, MCA 1983; redes. 25-2-126(1), (3) by Sec. 18(2), Ch. 432, L. 1985; (2)En. Sec. 58, p. 52, L. 1877; re-en. Sec. 58, 1st Div. Rev. Stat. 1879; re-en. Sec. 58, 1st Div. Comp. Stat. 1887; amd. Sec. 612, C. Civ. Proc. 1895; re-en. Sec. 6503, Rev. C. 1907; re-en. Sec. 9095, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 394; re-en. Sec. 9095, R.C.M. 1935; R.C.M. 1947, 93-2903; amd. Sec. 14, Ch. 432, L. 1985; sec. 25-2-106, MCA 1983; redes. 25-2-126(2) by Code Commissioner, 1985; amd. Sec. 1, Ch. 128, L. 1999; amd. Sec. 9, Ch. 535, L. 2021; amd. Sec. 4, Ch. 357, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 357, L. 2025. Amendment effective October 1, 2025.

Cross-References

Liability exposure of governmental entities, Title 2, ch. 9, part 1.

Claims and actions against governmental entities, Title 2, ch. 9, part 3.

25-2-127. Challenge to recently enacted law. (1) The proper place of trial for an action that challenges a statute or session law enacted or amended within the legislative biennium is in a county that is wholly or partially within the legislative district of the primary sponsor of the bill that enacted or amended the statute or session law.

(2) As used in this section, the following definitions apply:

(a) "Challenge" means:

(i) to plead that a statute or session law is unconstitutional under a provision of the state or federal constitution; or

(ii) to seek an injunction against the execution of a statute.

(b) "Legislative biennium" means a 2-year period beginning on the first Monday of January of an odd-numbered year and ending the day before the first Monday of January of the next odd-numbered year.

History: En. Sec. 1, Ch. 357, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Cross-References

Claims and actions against governmental entities, Title 2, ch. 9, part 3.

Findings of purpose — legislator intervention in legal challenges authorized, 5-2-107.

25-2-128 through 25-2-130 reserved.

25-2-131. Specific statutes control. The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

History: En. Sec. 16, Ch. 432, L. 1985.

Cross-References

Legal proceedings affecting hazardous waste management facilities — venue, 75-10-420.

Part 2
Change of Venue

Part Cross-References

Right of accused to impartial jury, Art. II, sec. 24, Mont. Const.

Change of venue in emergency, 3-5-405.

25-2-201. When change of venue required. The court or judge shall, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the current place of trial;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change;

(4) when a party enters a pleading that challenges, as defined in 25-2-127, a statute or session law if the statute or session law was enacted or amended within the legislative biennium, as defined in 25-2-127; and

(5) when a primary bill sponsor intervenes pursuant to 5-2-107 in a declaratory judgment action.

History: **En. Sec. 21, p. 46, Bannack Stat.; amd. Ch. 8, L. 3d Session 1866, which was set aside by Act of Congress of March 2, 1867; amd. Sec. 1, p. 68, L. 1867; amd. Sec. 27, p. 31, Cod. Stat. 1871; re-en. Sec. 62, p. 53, L. 1877; re-en. Sec. 62, 1st Div. Rev. Stat. 1879; re-en. Sec. 62, 1st Div. Comp. Stat. 1887; amd. Sec. 615, C. Civ. Proc. 1895; en. Ch. 2, Ex. L. 1903; re-en. Sec. 6506, Rev. C. 1907; re-en. Sec. 9098, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 397; re-en. Sec. 9098, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1973; [(4) superseded by Sup. Ct. Ord., 34 St. Rep. 26, eff. March 1, 1977]; R.C.M. 1947, 93-2906; amd. Sec. 5, Ch. 357, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 357, L. 2025. Amendment effective October 1, 2025.

25-2-202. Change of venue on agreement of parties. All the parties to an action, by stipulation or by consent in open court entered in the minutes, may agree that the place of trial may be changed to any county in the state. Thereupon the court must order the change as agreed upon.

History: **En. Sec. 619, C. Civ. Proc. 1895; re-en. Sec. 6510, Rev. C. 1907; re-en. Sec. 9102, R.C.M. 1921; re-en. Sec. 9102, R.C.M. 1935; R.C.M. 1947, 93-2910.**

25-2-203. Papers to be transmitted. When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleading and papers therein to the clerk of the court to which it is transferred.

History: **En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).**

25-2-204. Jurisdiction preserved. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

History: **En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).**

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

25-2-205. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: **En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6512, Rev. C. 1907; re-en. Sec. 9104, R.C.M. 1921; re-en. Sec. 9104, R.C.M. 1935; R.C.M. 1947, 93-2912.**

25-2-206. Judgment affecting real property to be transmitted. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate or some portion of the real estate is situated, the clerk of the court shall, after final judgment in the action, certify under the clerk's seal of office and transmit to the corresponding court of the county in which the real estate affected by the action is situated a copy of the judgment. The clerk receiving the copy shall file, docket, and record the judgment in the record of the court, briefly designating it as a judgment transferred from .... court (naming the proper court).

History: **En. Sec. 65, p. 54, L. 1877; re-en. Sec. 65, 1st Div. Rev. Stat. 1879; re-en. Sec. 65, 1st Div. Comp. Stat. 1887; re-en. Sec. 618, C. Civ. Proc. 1895; re-en. Sec. 6509, Rev. C. 1907; re-en. Sec. 9101, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 400; re-en. Sec. 9101, R.C.M. 1935; R.C.M. 1947, 93-2909; amd. Sec. 382, Ch. 56, L. 2009.**

CHAPTER 3

SERVICE OF PROCESS AND OTHER PAPERS

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25-3-105. Person serving process — penalty for obstruction — exception.
25-3-106. Medical malpractice claims — time limit.
25-3-107. Time limit for service of process.

Part 2 — Service by an Officer

25-3-201. Delivery of papers to officer.
25-3-202. When officer's execution of process justified and required.
25-3-203. Prepayment of cost of service.
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Service on federal lands, 2-1-202.
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Service in Yellowstone National Park, 2-1-207.
Service on Fort Peck Dam territory, 2-1-209.
Service on Indian land, 2-1-307.
Registration of process servers, Title 25, ch. 1, part 11.
Service upon foreign rural cooperatives, 35-18-107.
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Service upon geophysical exploration firm, 82-1-102.

Part 1
General Provisions

25-3-101. Definitions. As used in parts 2 and 3 of this chapter, the following definitions apply:

(1) "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

(2) "Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers.

History: En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; R.C.M. 1947, 16-2701.

25-3-102 through 25-3-104 reserved.

25-3-105. Person serving process — penalty for obstruction — exception. (1) A process server registered under Title 37, chapter 60, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

(2) A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

(3) An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant.

History: En. Sec. 1, Ch. 69, L. 1997; amd. Sec. 7, Ch. 405, L. 2007.

Cross-References

Obstructing peace officer or other public servant, 45-7-302.

25-3-106. Medical malpractice claims — time limit. A plaintiff in a medical malpractice action shall accomplish service within 6 months after filing the complaint. If the plaintiff fails to do so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant has made an appearance.

History: En. Sec. 19, Ch. 368, L. 2015; amd. Sec. 1, Ch. 318, L. 2021.

Compiler's Comments

Purported Repeal of Termination Provision: Although sec. 2, Ch. 35, L. 2025, purported to repeal the termination of this section imposed by sec. 28, Ch. 368, L. 2015, and sec. 38, Ch. 415, L. 2019, the termination provision was previously removed by sec. 3, Ch. 318, L. 2021, and sec. 4, Ch. 318, L. 2021.

25-3-107. Time limit for service of process. Except as provided in 25-3-106, a plaintiff shall make service of process no later than 2 years after filing the complaint. If the plaintiff fails to do so, the court, on motion or on its own initiative, shall dismiss the action without prejudice unless the defendant has made an appearance.

History: En. Sec. 1, Ch. 263, L. 2023.

Part 2
Service by an Officer

Part Cross-References

Service by Supreme Court Marshal, 3-2-502.
Service by Constable, 3-10-701, 3-10-706.
Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

25-3-201. Delivery of papers to officer. (1) (a) It is the duty of a party in any civil action pending in a district court or the party's agent or attorney to forward by mail any process, summons, or other papers required in the cause.

(b) It is the duty of the sheriff, registered process server, or other officer to whom the process, summons, or papers described in subsection (1)(a) may be directed to receive the process, summons, or papers at the place where the documents are directed.

(2) If the papers are delivered for service away from the county seat, all necessary copies must be furnished for service.

(3) If a sheriff, registered process server, or other officer refuses to receive a summons or other process at the point where it was directed or refuses to serve the summons or process, the sheriff, registered process server, or other officer is guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding $100.

History: (1), (3)En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (2)En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; R.C.M. 1947, 25-226(part), 93-3016(part); amd. Sec. 83, Ch. 575, L. 1981; amd. Sec. 10, Ch. 548, L. 1987; amd. Sec. 8, Ch. 405, L. 2007.

25-3-202. When officer's execution of process justified and required. A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R.C.M. 1921; Cal. Pol. C. Sec. 4187; re-en. Sec. 4788, R.C.M. 1935; R.C.M. 1947, 16-2716; amd. Sec. 11, Ch. 548, L. 1987.

25-3-203. Prepayment of cost of service. An officer or registered process server receiving papers for service may not be required to serve papers for service unless the person on whose behalf the service is made or that person's agent or attorney first pays the cost of the service upon a demand by the officer or registered process server.

History: En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; R.C.M. 1947, 93-3016(part); amd. Sec. 12, Ch. 548, L. 1987; amd. Sec. 9, Ch. 405, L. 2007.

Cross-References

Governmental entities not required to prepay fees — exceptions, 25-10-405.

25-3-204. Officer to exhibit process. The officer or registered process server executing a service of process shall display the service of process, all attached papers, and an identification card upon request by an interested party at any time during execution of the service of process.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R.C.M. 1921; Cal. Pol. C. Sec. 4188; re-en. Sec. 4789, R.C.M. 1935; R.C.M. 1947, 16-2717; amd. Sec. 13, Ch. 548, L. 1987; amd. Sec. 10, Ch. 405, L. 2007.

25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907; re-en. Sec. 4792, R.C.M. 1921; Cal. Pol. C. Sec. 4191; re-en. Sec. 4792, R.C.M. 1935; R.C.M. 1947, 16-2720; amd. Sec. 14, Ch. 548, L. 1987.

Cross-References

Coroner allowed same salary as Sheriff for like services, 7-4-2911.

Duties of County Coroner, 7-4-2911.

25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge, and denominated an elisor in the following cases:

(a) The sheriff and coroner are both parties.

(b) Either of these officers is a party, and the process is against the other.

(c) Either of these officers is a party, and there is a vacancy in the office of the other.

(d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, the elisor shall execute and return the process in the same manner that the sheriff is required to execute similar process. The court or judge may at any time on the court's or judge's own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907; re-en. Sec. 4793, R.C.M. 1921; Cal. Pol. C. Sec. 4192; re-en. Sec. 4793, R.C.M. 1935; R.C.M. 1947, 16-2721; amd. Sec. 383, Ch. 56, L. 2009.

Cross-References

Registration of process servers — levying officers, Title 25, ch. 1, part 11.

Part 3
Return of Service

25-3-301. Time and manner of return. (1) The sheriff or other person serving a summons or other process or order required by any of the provisions of law, issued for any of the courts of this state, shall make due and legal return of the service and file the return with the clerk of the court in which the action or proceeding is pending. The return must be made within 10 days after making the service if the service was made in the county in which the action or proceeding is pending and within 20 days after making the service when the service was made outside of the county in which the action or proceeding is pending. Any failure to make and file the return may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose a return of process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, postage prepaid.

(3) In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, postage prepaid, and deposit it in the post office addressed to the officer, agent, or attorney who sent it.

History: (1)En. Sec. 1, Ch. 38, L. 1907; re-en. Sec. 6527, Rev. C. 1907; re-en. Sec. 9124, R.C.M. 1921; re-en. Sec. 9124, R.C.M. 1935; Sec. 93-3020, R.C.M. 1947; (2)En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R.C.M. 1921; Cal. Pol. C. Sec. 4177; re-en. Sec. 4778, R.C.M. 1935; Sec. 16-2706, R.C.M. 1947; R.C.M. 1947, 16-2706, 93-3020; amd. Sec. 84, Ch. 575, L. 1981; amd. Sec. 15, Ch. 548, L. 1987; amd. Sec. 3, Ch. 392, L. 2005.

25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the proof of the process or notices having been served as stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R.C.M. 1921; Cal. Pol. C. Sec. 4178; re-en. Sec. 4779, R.C.M. 1935; R.C.M. 1947, 16-2707; amd. Sec. 16, Ch. 548, L. 1987; amd. Sec. 11, Ch. 405, L. 2007.

Part 4
Service of Papers After Defendant's Appearance

25-3-401. Notice requirements after appearance of defendant. A defendant appears in an action when the defendant answers, files a motion, or gives the plaintiff written notice of appearance or when an attorney gives notice of appearance for the defendant or has the appearance entered in open court. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.

History: En. Sec. 494, p. 232, L. 1867; re-en. Sec. 574, p. 152, Cod. Stat. 1871; re-en. Sec. 478, p. 167, L. 1877; re-en. Sec. 478, 1st Div. Rev. Stat. 1879; re-en. Sec. 491, 1st Div. Comp. Stat. 1887; amd. Sec. 1834, C. Civ. Proc. 1895; re-en. Sec. 7149, Rev. C. 1907; re-en. Sec. 9782, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1014; re-en. Sec. 9782, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1963; R.C.M. 1947, 93-8505; amd. Sec. 384, Ch. 56, L. 2009.

Cross-References
Actual and constructive notice, 1-1-217.

25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for that party. However, in all cases in which a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring the party into contempt, unless the court orders otherwise.

History: En. Sec. 495, p. 232, L. 1867; re-en. Sec. 575, p. 153, Cod. Stat. 1871; re-en. Sec. 479, p. 168, L. 1877; re-en. Sec. 479, 1st Div. Rev. Stat. 1879; re-en. Sec. 492, 1st Div. Comp. Stat. 1887; re-en. Sec. 1835, C. Civ. Proc. 1895; re-en. Sec. 7150, Rev. C. 1907; re-en. Sec. 9783, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1015; re-en. Sec. 9783, R.C.M. 1935; R.C.M. 1947, 93-8506; amd. Sec. 85, Ch. 575, L. 1981; amd. Sec. 385, Ch. 56, L. 2009.

Part 5
Alternative Methods of Service

25-3-501. Service of telegraphic or telephonic copy. (1) Any summons, writ, or order in a civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for service in any place. The telegraphic or telephonic copy of the writ, order, or paper transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by the officer or person, if any return is required, in the same manner and with the same effect in all respects as the original might be delivered to the officer or person. The officer or person serving or executing the writ, order, or paper has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy of the writ or order must be preserved in the telegraph or telephone office from which it is sent. In sending the writ or order, either the original or certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the document, to telegraph or telephone a description of the seal or any words or device on the seal, but the seal may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal".

History: En. Sec. 1837, C. Civ. Proc. 1895; re-en. Sec. 7152, Rev. C. 1907; re-en. Sec. 9785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1017; re-en. Sec. 9785, R.C.M. 1935; R.C.M. 1947, 93-8508; amd. Sec. 386, Ch. 56, L. 2009.

25-3-502. Publication to be once a week. Where not otherwise expressly prescribed by law, all rules, orders, and decrees of court, summonses, and notices of all kinds, whether given by any court, judge, or clerk thereof or by any other officer, board, or commission, which by the laws of this state are required to be published in any newspaper shall be published once a week during the time prescribed by law for publication thereof, whether such publication be made in a weekly, semiweekly, triweekly, or daily newspaper.

History: En. Sec. 1, Ch. 104, L. 1917; re-en. Sec. 9833, R.C.M. 1921; re-en. Sec. 9833, R.C.M. 1935; R.C.M. 1947, 93-8718.

Cross-References
Week defined, 1-1-301.

25-3-503. What suffices as once a week. Whenever any statute of Montana requires the publication of any notice, order, or other paper or document in any newspaper once a week for any specified number of weeks, it shall be sufficient to so publish the same once each week for such number of times as shall equal the number of weeks so designated.

History: En. Sec. 1, Ch. 76, L. 1929; re-en. Sec. 9833.1, R.C.M. 1935; R.C.M. 1947, 93-8719.

Cross-References

Week defined, 1-1-301.

25-3-504. Designating unknown persons as defendants. (1) In the situations listed in Rule 4(o)(1), M.R.Civ.P., persons whose names are unknown to plaintiff may be made parties defendant, either on the filing of the complaint, cross-complaint, or complaint in intervention, as the case may be, or at any time thereafter by amendment thereof, by the name and description of unknown owners, unknown heirs, or unknown devisees of any deceased person or by all of such designations.

(2) (a) When persons are made parties defendant by the designation of unknown owners, it shall not be necessary to add to such designation in the title of the action a description of the property involved, whether real, personal, or mixed, of which such persons are claimed or supposed to be unknown owners or claimants or parties in interest, but a description of the property involved shall be included in the body of the summons for publication in the action.

(b) When persons are made defendant by the style and description of unknown heirs or devisees, there shall be added to such designation of them the name of the deceased person of whom they shall be claimed or supposed to be the heirs or devisees.

History: En. Sec. 1, Ch. 105, L. 1941; amd. Sec. 1, Ch. 179, L. 1943; R.C.M. 1947, 93-2819; amd. Sec. 86, Ch. 575, L. 1981.

Cross-References

Suing party by fictitious name, 25-5-103.

Designating unknown person as defendant — Justices' Courts, 25-31-405.

25-3-505. Effect of service by publication upon unknown persons. Judgments and decrees rendered in actions or proceedings when persons have been so made parties and served by publication of summons shall have the effect prescribed in Rule 4(o)(2), M.R.Civ.P. If such persons are made parties by the designation of:

(1) unknown heirs, the judgment or decree shall be conclusive as to all heirs of such deceased party;

(2) unknown devisees, the judgment or decree in such proceedings shall be conclusive as against all devisees of such deceased person;

(3) unknown owners, the judgment or decree rendered in such action or proceeding shall be conclusive as against the world, including persons with contingent interests in the controversy and persons not in being who may have an interest or contingent interest therein.

History: En. Sec. 2, Ch. 105, L. 1941; R.C.M. 1947, 93-2820; amd. Sec. 87, Ch. 575, L. 1981.

Cross-References

Suing party by fictitious name, 25-5-103.

Justices' Courts — designating unknown person as defendant, 25-31-405.

Part 6

Service on Secretary of State — Nonresident Motorists

Part Cross-References

Duties of Secretary of State, 2-15-401.

25-3-601. Conditional granting of use of highways to nonresidents. Subject to a compliance with the motor vehicle laws of this state and the acceptance of the provisions of this part and 25-10-206, nonresident owners and operators of motor vehicles hereby are granted the privilege of using the highways, roads, and streets of this state and its political subdivisions, and the use of such highways, roads, and streets shall be deemed and construed to be an acceptance of the provisions of this part and 25-10-206.

History: En. Sec. 1, Ch. 10, L. 1937; R.C.M. 1947, 53-201.

Cross-References

Motor vehicles — certificate of title, registration, and taxation, Title 61, ch. 3.

Traffic regulations, Title 61, ch. 8.

Motor vehicle equipment, Title 61, ch. 9.

25-3-602. Operation of vehicle considered consent to service on secretary of state. The acceptance by a nonresident of the rights and privileges conferred by the laws of this state to use the highways, roads, and streets of the state and its political subdivisions, as evidenced by the nonresident operating a motor vehicle on the highways, roads, and streets, is considered equivalent to and construed to be an appointment by the nonresident of the secretary of state of the state of Montana to be the nonresident's true and lawful attorney upon whom may be served all lawful summonses and processes against the nonresident growing out of any accident, collision, or liability in which the nonresident may be involved while operating a motor vehicle upon the highways, roads, and streets. The acceptance or operation is a signification of the nonresident's agreement that any summons or process against the nonresident that is served on the secretary of state is of the same legal force and validity as if served on the nonresident personally within the state of Montana.

History: En. Sec. 2, Ch. 10, L. 1937; R.C.M. 1947, 53-202; amd. Sec. 387, Ch. 56, L. 2009.

25-3-603. Operation of vehicle by agent. The operation by any person, individually or by the person's agent, of any motor vehicle, whether registered or unregistered and with or without a license to operate, on any public way in this state is considered equivalent to an appointment by the person of the secretary of state to be the person's true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against the person growing out of an accident or collision in which the person or the person's agent may be involved while operating a motor vehicle on any public way in this state. The operation is a signification of an agreement by the person that any process against the person that is served upon the secretary of state is of the same force and validity as if served upon the person personally. This section does not apply in case of any cause of action, for the service of process in which provision is made by 25-3-602, and it does not authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana.

History: En. Sec. 3, Ch. 10, L. 1937; R.C.M. 1947, 53-203; amd. Sec. 388, Ch. 56, L. 2009.

Cross-References

Agency, Title 28, ch. 10.

25-3-604. Secretary of state's record of process served. The secretary of state shall keep a record of all such summonses and process, which shall show the day of service.

History: En. Sec. 6, Ch. 10, L. 1937; R.C.M. 1947, 53-206.

Cross-References

Public records, Title 2, ch. 6.

CHAPTER 4
PLEADINGS, MOTIONS, AND OTHER PAPERS

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25-4-111. Lost papers.
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25-4-201. Description of real property in complaint.
25-4-202. Copy of written instrument in pleading.
25-4-203. Verification of pleadings.
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25-4-301. Pleading statute of limitations.
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25-4-602. Judgment for excess when plaintiff admits counterclaim.

Part 1
General Provisions

25-4-101. Motions and orders — where made. (1) Motions must be made in the county in which the action is brought or in any adjoining county in the same district. In the absence of the judge of the district from the district or in an action pending in which the judge is disqualified to act, a motion may be made before the judge of any adjoining district unless there is another judge in the same district who is not disqualified to act. In that case, a motion must be made before another judge in the same district.

(2) Orders made out of court may be made by the judge of the court in any part of the state.

History: En. Sec. 418, p. 128, Bannack Stat.; re-en. Sec. 487, p. 231, L. 1867; amd. Sec. 567, p. 151, Cod. Stat. 1871; amd. Sec. 470, p. 166, L. 1877; re-en. Sec. 470, 1st Div. Rev. Stat. 1879; re-en. Sec. 483, 1st Div. Comp. Stat. 1887; re-en. Sec. 1821, C. Civ. Proc. 1895; re-en. Sec. 7140, Rev. C. 1907; re-en. Sec. 9773, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1004; re-en. Sec. 9773, R.C.M. 1935; R.C.M. 1947, 93-8402; amd. Sec. 88, Ch. 575, L. 1981; amd. Sec. 389, Ch. 56, L. 2009.

Cross-References

Definition of districts and assignment of judges, Title 3, ch. 5, part 1.
Powers of judges at chambers, 3-5-311.
Jurisdiction of judges coextensive with state, 3-5-312.
Terms and location of District Courts, Title 3, ch. 5, part 4.

25-4-102. Transfer when judge unable to hear motion or return of order. When a notice of motion is given or an order to show cause is made returnable before a judge out of court and, at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by the judge's order to some other judge.

History: En. Sec. 420, p. 129, Bannack Stat.; re-en. Sec. 489, p. 231, L. 1867; re-en. Sec. 569, p. 152, Cod. Stat. 1871; re-en. Sec. 472, p. 166, L. 1877; re-en. Sec. 472, 1st Div. Rev. Stat. 1879; re-en. Sec. 485, 1st Div. Comp. Stat. 1887; amd. Sec. 1823, C. Civ. Proc. 1895; re-en. Sec. 7142, Rev. C. 1907; re-en. Sec. 9775, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1006; re-en. Sec. 9775, R.C.M. 1935; R.C.M. 1947, 93-8404; amd. Sec. 390, Ch. 56, L. 2009.

25-4-103. Vacating or modifying order made without notice. An order made out of court without notice to the adverse party may be vacated or modified, without notice, by the judge who made it, or it may be vacated or modified on notice in the manner in which other motions are made.

History: En. Sec. 249, p. 94, Bannack Stat.; re-en. Sec. 318, p. 199, L. 1867; re-en. Sec. 367, p. 107, Cod. Stat. 1871; re-en. Sec. 406, p. 149, L. 1877; re-en. Sec. 406, 1st Div. Rev. Stat. 1879; re-en. Sec. 419, 1st Div. Comp. Stat. 1887; re-en. Sec. 1824, C. Civ. Proc. 1895; re-en. Sec. 7143, Rev. C. 1907; re-en. Sec. 9776, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 937; re-en. Sec. 9776, R.C.M. 1935; R.C.M. 1947, 93-8405.

25-4-104 through 25-4-110 reserved.

25-4-111. Lost papers. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

History: En. Sec. 1891, C. Civ. Proc. 1895; re-en. Sec. 7184, Rev. C. 1907; re-en. Sec. 9817, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1045; re-en. Sec. 9817, R.C.M. 1935; R.C.M. 1947, 93-8702.

25-4-112. Papers with technical defects. An affidavit, notice, or other paper without the title of the action or proceeding in which it is made or with a defective title is as valid and effectual for any purpose as if duly entitled if it intelligibly refers to such action or proceeding.

History: En. Sec. 424, p. 129, Bannack Stat.; re-en. Sec. 502, p. 233, L. 1867; re-en. Sec. 579, p. 153, Cod. Stat. 1871; re-en. Sec. 520, p. 177, L. 1877; re-en. Sec. 520, 1st Div. Rev. Stat. 1879; re-en. Sec. 537, 1st Div. Comp. Stat. 1887; re-en. Sec. 1892, C. Civ. Proc. 1895; re-en. Sec. 7185, Rev. C. 1907; re-en. Sec. 9818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1046; re-en. Sec. 9818, R.C.M. 1935; R.C.M. 1947, 93-8703.

Part 2
Pleadings in General

25-4-201. Description of real property in complaint. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

History: En. Sec. 100, p. 64, L. 1877; re-en. Sec. 100, 1st Div. Rev. Stat. 1879; re-en. Sec. 102, 1st Div. Comp. Stat. 1887; re-en. Sec. 744, C. Civ. Proc. 1895; re-en. Sec. 6570, Rev. C. 1907; re-en. Sec. 9168, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 455; re-en. Sec. 9168, R.C.M. 1935; R.C.M. 1947, 93-3805.

Cross-References

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

Montana coordinate system, Title 70, ch. 22, part 2.

25-4-202. Copy of written instrument in pleading. The insertion in a pleading of a copy of a written instrument is equivalent to setting forth the instrument according to its legal effect.

History: En. Sec. 748, C. Civ. Proc. 1895; re-en. Sec. 6574, Rev. C. 1907; re-en. Sec. 9172, R.C.M. 1921; re-en. Sec. 9172, R.C.M. 1935; R.C.M. 1947, 93-3809.

25-4-203. Verification of pleadings. (1) In any case in which a verification by affidavit is required, except as otherwise specifically provided, the verification by affidavit must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters stated in the affidavit on information and belief, and that as to those the deponent believes it to be true. The verification must be made by the party or, if there are several parties united in interest or pleading, by at least one of the parties acquainted with the facts if the party is in the county and capable of making the verification. The verification may also be made by the agent or attorney of the party if the party is absent from the county in which the attorney resides or if, for any other cause, the party is unable to verify the pleading. In that case, the verification must state that the deponent is the agent or attorney of the party, the reason why the verification is made by the agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of the agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer of the corporation and must state the office of the officer and that the matters stated in the verification are true to the best knowledge, information, and belief of the officer. If there is no officer of the corporation within the county, the verification may be made by the corporation's attorney.

History: En. Sec. 55, p. 144, L. 1867; amd. Sec. 9, p. 64, L. 1869; amd. Sec. 63, p. 39, Cod. Stat. 1871; re-en. Sec. 94, p. 62, L. 1877; re-en. Sec. 94, 1st Div. Rev. Stat. 1879; re-en. Sec. 96, 1st Div. Comp. Stat. 1887; en. Sec. 731, C. Civ. Proc. 1895; re-en. Sec. 6565, Rev. C. 1907; re-en. Sec. 9163, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 446; re-en. Sec. 9163, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1963; R.C.M. 1947, 93-3702; amd. Sec. 391, Ch. 56, L. 2009; amd. Sec. 3, Ch. 238, L. 2011.

Cross-References

False swearing, 45-7-202.

25-4-204. Time for amendment or reply after motion on pleading. When a motion concerning a pleading is sustained or overruled and time to amend, answer, or reply is given, the time so given runs from service of notice of the decision or order, except when the party against whom the decision is made is in court. In such case the time runs from the making of the decision or order.

History: En. Sec. 779, C. Civ. Proc. 1895; re-en. Sec. 6594, Rev. C. 1907; re-en. Sec. 9192, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 476; re-en. Sec. 9192, R.C.M. 1935; amd. Sec. 2, Ch. 8, L. 1937; R.C.M. 1947, 93-3910; amd. Sec. 89, Ch. 575, L. 1981.

Cross-References

Costs of motion, 25-10-202.

Part 3
Pleading Special Matters

Part Cross-References

Pleading licensure in action to collect brokerage commission, 37-51-401.
Consideration of mistake or imperfection in grant of real property, 70-20-202.

25-4-301. Pleading statute of limitations. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section .... (giving the number of the section and subsection thereof, if it is so divided, relied upon). If such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

History: En. Sec. 103, p. 64, L. 1877; re-en. Sec. 103, 1st Div. Rev. Stat. 1879; re-en. Sec. 105, 1st Div. Comp. Stat. 1887; re-en. Sec. 749, C. Civ. Proc. 1895; re-en. Sec. 6575, Rev. C. 1907; re-en. Sec. 9173, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 458; re-en. Sec. 9173, R.C.M. 1935; R.C.M. 1947, 93-3810.

Cross-References

Limitation on actions involving public contracts, 18-1-402.
Limitations on commencement of civil actions, 25-1-102.
Statutes of limitations, Title 27, ch. 2.
Statute of limitations in contracts for sale, 30-2-725.

25-4-302. Pleading an account. It is not necessary for a party to set forth in a pleading the items of an account alleged in the pleading, but the party shall deliver to the adverse party, within 5 days or additional time that the court may allow or may be agreed to by the parties, after a demand in writing, a copy of the account or be precluded from giving evidence of the account. The court or judge may order a further account when the one delivered is too general or is defective in any particular.

History: En. Sec. 55, p. 53, Bannack Stat.; amd. Sec. 56, p. 145, L. 1867; re-en. Sec. 64, p. 40, Cod. Stat. 1871; re-en. Sec. 99, p. 64, L. 1877; re-en. Sec. 99, 1st Div. Rev. Stat. 1879; re-en. Sec. 101, 1st Div. Comp. Stat. 1887; amd. Sec. 743, C. Civ. Proc. 1895; re-en. Sec. 6569, Rev. C. 1907; re-en. Sec. 9167, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 454; re-en. Sec. 9167, R.C.M. 1935; R.C.M. 1947, 93-3804; amd. Sec. 392, Ch. 56, L. 2009.

25-4-303. True value of property — action for taking. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property and the officer taking the property or the sureties on any bond or undertaking are sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made or that the value in the affidavit stated was inserted by mistake, whereupon the court must disregard the value as stated in the affidavit.

History: En. Sec. 115, p. 67, L. 1877; re-en. Sec. 115, 1st Div. Rev. Stat. 1879; re-en. Sec. 117, 1st Div. Comp. Stat. 1887; amd. Sec. 775, C. Civ. Proc. 1895; re-en. Sec. 6590, Rev. C. 1907; re-en. Sec. 9188, R.C.M. 1921; re-en. Sec. 9188, R.C.M. 1935; R.C.M. 1947, 93-3906.

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.
Actions for claim and delivery, Title 27, ch. 17, part 1.

25-4-304 through 25-4-310 reserved.

25-4-311. Damages for personal injury or wrongful death not to be stated. In an action for the recovery of money or damages for personal injury or wrongful death, the amount thereof may not be stated in the claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim.

History: En. 93-2721 by Sec. 1, Ch. 525, L. 1977; R.C.M. 1947, 93-2721.

Cross-References

Damages for injuries or death inflicted in duel, 27-1-223.
Damages for wrongful death, 27-1-323.
Action by parent or guardian for injury to child or ward, 27-1-512.
Action for wrongful death, 27-1-513.

25-4-312. Request for statement of damages — response. When an action is filed in the district court to recover damages for personal injury or wrongful death, the parties against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be filed and served upon the claimant, who shall file and serve a responsive statement as to damages within 15 days thereafter. In the event that a response is not served, the party, on notice to the claimant, may petition the court in which the action is pending to order the claimant to serve a responsive statement.

History: En. 93-2722 by Sec. 2, Ch. 525, L. 1977; R.C.M. 1947, 93-2722.

Cross-References

Damages for wrongful death, 27-1-323.
Action by parent or guardian for injury to child or ward, 27-1-512.
Action for wrongful death, 27-1-513.

25-4-313. Notice to defendant when no request for statement. If no request is made for such a statement setting forth the nature and amount of damages being sought, the claimant shall give notice to the defendant of the amount of special and general damages sought to be recovered:

(1) before a default may be taken; or
(2) in the event an answer is filed, at least 45 days prior to the date set for the trial.

History: En. 93-2723 by Sec. 3, Ch. 525, L. 1977; R.C.M. 1947, 93-2723.

25-4-314. Permissive delivery of statement with summons. A copy of the statement setting forth the nature and amount of damages being sought may be delivered to the defendant at the time of service of the summons and complaint but may not be filed for 20 days after the complaint is filed.

History: En. 93-2724 by Sec. 4, Ch. 525, L. 1977; R.C.M. 1947, 93-2724.

Part 4
Counterclaim and Cross-Claim

Part Cross-References

Notice of counterclaim or cross-claim by state to be given to Attorney General, 25-1-501.
Mode of trial of counterclaim, 25-7-104.
Availability of provisional remedies to defendant interposing counterclaim, 27-15-102.

25-4-401. Counterclaim by person sued in representative capacity. In an action against an executor, administrator, or other person sued in a representative capacity, the defendant may set forth as a counterclaim a demand belonging to the decedent or other person whom the executor, administrator, or person represents when the person so represented would have been entitled to set forth the counterclaim in an action against the person.

History: En. Sec. 695, C. Civ. Proc. 1895; re-en. Sec. 6545, Rev. C. 1907; re-en. Sec. 9142, R.C.M. 1921; re-en. Sec. 9142, R.C.M. 1935; R.C.M. 1947, 93-3406; amd. Sec. 393, Ch. 56, L. 2009.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.
Powers and duties of personal representative, Title 72, ch. 3, part 6.

25-4-402. Counterclaim against person suing in representative capacity. In an action brought by an executor or administrator in a representative capacity, a demand against the decedent belonging at the time of the decedent's death to the defendant may be set forth by the defendant as a counterclaim as if the action had been brought by the decedent in the decedent's lifetime. If a balance is found to be due to the defendant, judgment must be rendered for the balance against the plaintiff in the representative capacity. Execution can be issued upon the judgment only in a case in which it could be issued upon a judgment in an action against the executor or administrator.

History: En. Sec. 696, C. Civ. Proc. 1895; re-en. Sec. 6546, Rev. C. 1907; re-en. Sec. 9143, R.C.M. 1921; re-en. Sec. 9143, R.C.M. 1935; R.C.M. 1947, 93-3407; amd. Sec. 394, Ch. 56, L. 2009.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.
Powers and duties of personal representative, Title 72, ch. 3, part 6.

25-4-403. Counterclaim in action on contract. A counterclaim on a contract is subject to the following rules:

(1) Except as otherwise provided by the Uniform Commercial Code, if the action is founded upon a contract that has been assigned by the party to the contract, a demand existing against the party to the contract or an assignee of the contract at the time of the assignment and belonging to the defendant, in good faith, before notice of the assignment must be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been allowed against the party or the assignee while the contract belonged to the party or the assignee.

(2) If the plaintiff is a trustee for another or if the action is in the name of the plaintiff who has no actual interest in the contract upon which it is founded, a demand against the plaintiff may not be allowed as a counterclaim, but so much of a demand existing against the person whom the plaintiff represents or for whose benefit the action is brought as will satisfy the plaintiff's demand must be allowed as a counterclaim if it might have been allowed in an action brought by the person beneficially interested.

History: En. Sec. 692, C. Civ. Proc. 1895; re-en. Sec. 6542, Rev. C. 1907; re-en. Sec. 9139, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 438; re-en. Sec. 9139, R.C.M. 1935; amd. Sec. 11-158, Ch. 264, L. 1963; R.C.M. 1947, 93-3403; amd. Sec. 395, Ch. 56, L. 2009.

Cross-References

Contracts — applicability of rules concerning transfers in general, 28-2-907.
Successive actions on same contract, 28-2-1501.
Uniform Commercial Code — assignment of contracts, 30-2-210.

25-4-404. Cross-claim to be asserted in answer. When the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires a determination shall demand it in the answer. The controversy between the defendants may not delay a judgment to which the plaintiff is entitled unless the court otherwise directs.

History: En. Sec. 753, C. Civ. Proc. 1895; re-en. Sec. 6579, Rev. C. 1907; re-en. Sec. 9177, R.C.M. 1921; re-en. Sec. 9177, R.C.M. 1935; R.C.M. 1947, 93-3814; amd. Sec. 396, Ch. 56, L. 2009.

Cross-References

Rights and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.
Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.

Part 5
Motion to Postpone Trial

Part Cross-References

Costs of postponement, 25-10-203.

25-4-501. Motion to postpone trial for absence of testimony. A motion to postpone a trial on grounds of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part).

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.

25-4-502. No postponement when expected evidence admitted. The court may also require the moving party to state, upon affidavit, the evidence that the party expects to obtain, and if the adverse party admits that the evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial may not be postponed.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part); amd. Sec. 397, Ch. 56, L. 2009.

25-4-503. Postponement on other grounds. Upon good cause shown and in furtherance of justice, the court may, in its discretion, postpone a trial or proceeding upon other grounds than the absence of evidence under such conditions as the court may direct.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part); amd. Sec. 90, Ch. 575, L. 1981.

Cross-References

Postponement to judicial day, 3-1-303.

25-4-504. Depositions of witnesses upon postponement. The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken by deposition before a judge or clerk of the court in which the case is pending or before such notary public as the court may indicate, which must accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witnesses were produced.

History: En. Sec. 447, p. 133, Bannack Stat.; re-en. Sec. 604, p. 158, Cod. Stat. 1871; re-en. Sec. 245, p. 99, L. 1877; re-en. Sec. 245, 1st Div. Rev. Stat. 1879; re-en. Sec. 254, 1st Div. Comp. Stat. 1887; amd. Sec. 1040, C. Civ. Proc. 1895; re-en. Sec. 6730, Rev. C. 1907; re-en. Sec. 9333, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 596; re-en. Sec. 9333, R.C.M. 1935; R.C.M. 1947, 93-4911.

Cross-References

Deposition defined, 1-1-202.
Before notary public, 1-5-603, 1-5-604.

Part 6
Procedure After Claims Partially Admitted

25-4-601. Procedure when answer admits part of plaintiff's claim. When the answer of the defendant, expressly or by not denying, admits a part of the plaintiff's claim to be just, the court, upon the plaintiff's motion, may, in its discretion, order that the action be severed, that a judgment be entered for the plaintiff for the part admitted, and, if the plaintiff elects, that the action be continued with like effect with regard to the subsequent proceedings as if it had been originally brought for the remainder of the claim. The order must prescribe the time and manner of the plaintiff's election. If the plaintiff elects to continue the action, the plaintiff's right to costs upon the judgment is the same as if it were taken in an action brought for only that part of the claim. If the plaintiff does not elect to continue the action, costs must be awarded as upon final judgment in any other case.

History: En. Sec. 702, C. Civ. Proc. 1895; re-en. Sec. 6552, Rev. C. 1907; re-en. Sec. 9149, R.C.M. 1921; re-en. Sec. 9149, R.C.M. 1935; R.C.M. 1947, 93-3413; amd. Sec. 398, Ch. 56, L. 2009.

Cross-References

Costs, Title 25, ch. 10.

25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract when the complaint demands judgment for a sum of money only, if the defendant by the answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer.

History: En. Sec. 703, C. Civ. Proc. 1895; re-en. Sec. 6553, Rev. C. 1907; re-en. Sec. 9150, R.C.M. 1921; re-en. Sec. 9150, R.C.M. 1935; R.C.M. 1947, 93-3414; amd. Sec. 91, Ch. 575, L. 1981; amd. Sec. 399, Ch. 56, L. 2009.

CHAPTER 5
PARTIES

Part 1 — Designation of Parties

25-5-101. Names of parties.
25-5-102. Use of abbreviated names.
25-5-103. Suing party by fictitious name.
25-5-104. Action against business association.

Part 2 — Capacity to Be a Party — Joinder

25-5-201. Capacity of married person to be a party.
25-5-202. Who may defend when spouse sued.
25-5-203. Defendants — adverse claims to real property.
25-5-204. Joinder of state as defendant in actions affecting title to property.

Part 3 — Guardian Ad Litem

25-5-301. Appointment of guardian.

Part 1
Designation of Parties

25-5-101. Names of parties. In a civil action, the party complaining is known as the plaintiff and the adverse party as the defendant. The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant.

History: Ap. p. Sec. 2, p. 43, Bannack Stat.; re-en. Sec. 2, p. 136, L. 1867; re-en. Sec. 2, p. 28, Cod. Stat. 1871; re-en. Sec. 2, p. 40, L. 1877; re-en. Sec. 2, 1st Div. Rev. Stat. 1879; re-en. Sec. 2, 1st Div. Comp. Stat. 1887; re-en. Sec. 461, C. Civ. Proc. 1895; re-en. Sec. 6426, Rev. C. 1907; re-en. Sec. 9009, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 308; re-en. Sec. 9009, R.C.M. 1935; Sec. 93-2302, R.C.M. 1947; Ap. p. Sec. 1930, C. Civ. Proc. 1895; re-en. Sec. 7200, Rev. C. 1907; re-en. Sec. 9834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1063; re-en. Sec. 9834, R.C.M. 1935; Sec. 93-8801, R.C.M. 1947; R.C.M. 1947, 93-2302, 93-8801.

Cross-References

One form of civil action, 25-1-101.
Action defined, 25-1-102.

25-5-102. Use of abbreviated names. It is sufficient in all actions, papers, pleadings, or proceedings to designate any party or person by the initial letter or letters or some contraction of the first name or names, instead of stating the first name in full.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part).

25-5-103. Suing party by fictitious name. When the plaintiff does not know the name of the defendant, the defendant may be designated in any pleading or proceeding by any name. When the defendant's true name is discovered, the pleadings or proceedings may be amended accordingly.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part); amd. Sec. 400, Ch. 56, L. 2009.

Cross-References

Designating unknown persons as defendants, 25-3-504.
Justice's Court — designating unknown person as defendant, 25-31-405.

25-5-104. Action against business association. When two or more persons associated in any business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability.

History: En. Sec. 439, p. 132, Bannack Stat.; re-en. Sec. 596, p. 157, Cod. Stat. 1871; amd. Sec. 25, p. 44, L. 1877; re-en. Sec. 25, 1st Div. Rev. Stat. 1879; re-en. Sec. 25, 1st Div. Comp. Stat. 1887; re-en. Sec. 590, C. Civ. Proc. 1895; re-en. Sec. 6497, Rev. C. 1907; re-en. Sec. 9089, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 388; re-en. Sec. 9089, R.C.M. 1935; R.C.M. 1947, 93-2827.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Power of credit union to sue and be sued, 32-3-401.
Power of religious corporation to sue and be sued, 35-3-205(2).
Power of business trust to sue and be sued, 35-5-103.

Part 2
Capacity to Be a Party — Joinder

Part Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.
Multiple defendants — determination of liability, 27-1-703.

25-5-201. Capacity of married person to be a party. A married person may sue and be sued in the same manner as if such person were sole.

History: En. Sec. 7, 1st Div. Comp. Stat. 1887; re-en. Sec. 572, C. Civ. Proc. 1895; re-en. Sec. 6479, Rev. C. 1907; re-en. Sec. 9069, R.C.M. 1921; re-en. Sec. 9069, R.C.M. 1935; amd. Sec. 48, Ch. 535, L. 1975; R.C.M. 1947, 93-2803.

Cross-References

Judgment for or against married person, 25-9-102.
Action for wrongful death, 27-1-513.
Who may sue for whose seduction, 27-1-514.
Protection of personal relations — abduction, 27-1-515.
Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-5-202. Who may defend when spouse sued. If a husband and wife are sued together, each spouse may defend for the spouse's own right, and if the other spouse fails to defend, the spouse who does choose to defend may defend for the other spouse's right also.

History: En. Sec. 8, p. 44, Bannack Stat.; re-en. Sec. 8, p. 136, L. 1867; re-en. Sec. 8, p. 28, Cod. Stat. 1871; amd. Sec. 8, p. 41, L. 1877; re-en. Sec. 8, 1st Div. Rev. Stat. 1879; re-en. Sec. 8, 1st Div. Comp. Stat. 1887; re-en. Sec. 573, C. Civ. Proc. 1895; re-en. Sec. 6480, Rev. C. 1907; re-en. Sec. 9070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 371; re-en. Sec. 9070, R.C.M. 1935; amd. Sec. 49, Ch. 535, L. 1975; R.C.M. 1947, 93-2804; amd. Sec. 401, Ch. 56, L. 2009.

25-5-203. Defendants — adverse claims to real property. In an action brought by a person out of possession of real property to determine an adverse claim of an interest or estate in the property, the person making the adverse claim and the persons in possession may be joined as defendants, and if the judgment is for the plaintiff, the plaintiff may have a writ for the possession of the premises as against the defendants in the action against whom the judgment has passed.

History: En. Sec. 17, p. 42, L. 1877; re-en. Sec. 17, 1st Div. Rev. Stat. 1879; re-en. Sec. 17, 1st Div. Comp. Stat. 1887; re-en. Sec. 582, C. Civ. Proc. 1895; re-en. Sec. 6489, Rev. C. 1907; re-en. Sec. 9081, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 380; re-en. Sec. 9081, R.C.M. 1935; R.C.M. 1947, 93-2817; amd. Sec. 402, Ch. 56, L. 2009.

Cross-References

Real property actions — limitations and adverse possession, Title 70, ch. 19.
Forcible entry and unlawful detainer, Title 70, ch. 27.
Quieting title to real property, Title 70, ch. 28.

25-5-204. Joinder of state as defendant in actions affecting title to property. In any action or proceeding brought in any district court of the state affecting the title to real or personal property in which the state has or claims to have an interest or claim, the state may be made a party defendant to such action or proceeding and its rights or interests adjudicated.

History: En. Sec. 1, Ch. 210, L. 1921; re-en. Sec. 9079, R.C.M. 1921; amd. Sec. 1, Ch. 65, L. 1931; re-en. Sec. 9079, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1977; R.C.M. 1947, 93-2815.

Cross-References

Notice to Attorney General, Title 25, ch. 1, part 5.
General rights of state over property, Title 70, ch. 1, part 2.
Quiet title and partition of personal property, Title 70, ch. 2, part 2.
Adverse possession, Title 70, ch. 19.
Forcible entry and unlawful detainer, Title 70, ch. 27.
Quieting title to real property, Title 70, ch. 28.

Part 3
Guardian Ad Litem

25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, the guardian ad litem must be appointed as follows:

(1) when the minor is plaintiff, upon the application of the minor if the minor is 14 years of age or, if under that age, upon the application of a relative or friend of the minor;

(2) when the minor is defendant, upon the application of the minor if the minor is 14 years of age and applies within 10 days after the service of the summons or, if under that age or if the minor neglects to apply, upon the application of a relative or friend of the minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of the insane or incompetent person or of any other party to the action or proceeding.

History: En. Sec. 10, p. 44, Bannack Stat.; re-en. Sec. 10, p. 136, L. 1867; re-en. Sec. 10, p. 28, Cod. Stat. 1871; re-en. Sec. 10, p. 41, L. 1877; re-en. Sec. 10, 1st Div. Rev. Stat. 1879; re-en. Sec. 10, 1st Div. Comp. Stat. 1887; re-en. Sec. 575, C. Civ. Proc. 1895; re-en. Sec. 6482, Rev. C. 1907; re-en. Sec. 9072, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 373; re-en. Sec. 9072, R.C.M. 1935; R.C.M. 1947, 93-2806; amd. Sec. 2, Ch. 2, L. 1983; amd. Sec. 403, Ch. 56, L. 2009.

Cross-References

Appointment of guardian — documents requiring seals, 3-1-206.
Appointment in paternity action, 40-6-110.
Appointment for abused or neglected child, 41-3-112.
Appointment of guardian at litem in Youth Court proceedings, 41-5-1411.

CHAPTER 6
RESERVED

CHAPTER 7
TRIALS

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Chapter Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Part 1
Issues — Mode of Trial

Part Cross-References

Duty of jury in trial for libel or slander, Art. II, sec. 7, Mont. Const.

Province of court and jury, Title 26, ch. 1, part 2.

25-7-101. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and

(2) of fact.

History: En. Sec. 123, p. 68, Bannack Stat.; re-en. Sec. 151, p. 163, L. 1867; re-en. Sec. 187, p. 64, Cod. Stat. 1871; re-en. Sec. 237, p. 98, L. 1877; re-en. Sec. 237, 1st Div. Rev. Stat. 1879; re-en. Sec. 246, 1st Div. Comp. Stat. 1887; amd. Sec. 1030, C. Civ. Proc. 1895; re-en. Sec. 6720, Rev. C. 1907; re-en. Sec. 9323, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 588; re-en. Sec. 9323, R.C.M. 1935; R.C.M. 1947, 93-4901.

25-7-102. Issues of law to be decided by court. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the court unless they are referred upon consent, and all discussions of law are to be addressed to the court.

History: Ap. p. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; Sec. 93-2501-2, R.C.M. 1947; Ap. p. Sec. 126, p. 68, Bannack Stat.; amd. Sec. 154, p. 163, L. 1867; re-en. Sec. 190, p. 64, Cod. Stat. 1871; re-en. Sec. 240, p. 98, L. 1877; re-en. Sec. 240, 1st Div. Rev. Stat. 1879; re-en. Sec. 249, 1st Div. Comp. Stat. 1887; re-en. Sec. 1032, C. Civ. Proc. 1895; re-en. Sec. 6722, Rev. C. 1907; re-en. Sec. 9325, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 591; re-en. Sec. 9325, R.C.M. 1935; Sec. 93-4903, R.C.M. 1947; R.C.M. 1947, 93-4903, 93-2501-2(part); amd. Sec. 92, Ch. 575, L. 1981.

Cross-References

Jury to determine law and facts in prosecutions for libel and slander, Art. II, sec. 7, Mont. Const.

Province of court and jury, Title 26, ch. 1, part 2.

25-7-103. When issues of fact to be decided by jury. All questions of fact, where the trial is by jury, other than those mentioned in 25-7-102 are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this code.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1.

Cross-References

Province of court and jury, Title 26, ch. 1, part 2.

25-7-104. Mode of trial of counterclaim. Where the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, the mode of trial of an issue of fact arising thereupon is the same as if it arose in an action brought by the defendant against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment.

History: En. Sec. 1036, C. Civ. Proc. 1895; re-en. Sec. 6726, Rev. C. 1907; re-en. Sec. 9329, R.C.M. 1921; re-en. Sec. 9329, R.C.M. 1935; R.C.M. 1947, 93-4907.

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4.

25-7-105. Offer of settlement. (1) (a) At any time more than 60 days after service of the complaint and more than 30 days before a trial in district court begins, a party may serve upon the adverse party a written offer to settle a claim for the money or property or to the effect specified in the offer.

(b) At any time after commencement of an action and more than 10 days before a trial in a court of limited jurisdiction begins, a party may serve upon the adverse party a written offer to settle a claim for the money or property or to the effect specified in the offer.

(c) If within 10 days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service of the offer and notice of acceptance with the clerk of court and the court shall enter judgment. An offer not accepted is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the final judgment is less favorable to the offeree than the offer, the offeree shall pay the costs incurred by the offeror after the offer was made. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, either party may make a written offer of settlement. The offer has the same effect as an offer before trial, and the applicable provisions of subsection (1) apply if the offer is served within a reasonable time not less than 10 days prior to the commencement of a hearing to determine the amount or extent of liability.

(3) For the purposes of this section, costs include reasonable attorney fees.

(4) This section applies only to an action or claim for which the amount contained in a pleading is $3 million or less, exclusive of costs, interest, and service charges, and the action or claim:

(a) arises from contract or breach of contract, other than a contract of insurance, bond, surety, or warranty; or

(b) involves real property.

History: En. Sec. 1, Ch. 529, L. 2001; amd. Sec. 1, Ch. 71, L. 2021; amd. Sec. 1, Ch. 452, L. 2023.

Part 2
Selection of Jury

Part Cross-References

Right to jury trial, Art. II, sec. 26, Mont. Const.
Juries and jurors, Title 3, ch. 15.
Trial juries — District Court, Title 3, ch. 15, part 5.
Juries in courts of limited jurisdiction, Title 3, ch. 15, part 7.
Criminal procedure — formation of trial jury, 46-16-111.
Formation of trial jury — Justices', Municipal, and City Courts, 46-17-202.

25-7-201. When a jury is to be selected. The procedure in this part for selecting a jury must be pursued as often as an issue is brought to trial by a jury.

History: En. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; R.C.M. 1947, 93-5005(part).

25-7-202. Judge or jury commissioner to draw ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge or jury commissioner in the presence of two witnesses must openly draw out of the trial juror box as many of the ballots with the names of jurors thereon, one after another, as are sufficient to form a jury for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.

History: En. Sec. 1050, C. Civ. Proc. 1895; re-en. Sec. 6731, Rev. C. 1907; amd. Sec. 10, Ch. 35, L. 1919; re-en. Sec. 9334, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 600; re-en. Sec. 9334, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1937; amd. Sec. 3, Ch. 3, L. 1939; R.C.M. 1947, 93-5001; amd. Sec. 12, Ch. 379, L. 1983.

Cross-References

Drawing — how conducted, 3-15-503.
Clerk to call list of jurors summoned and prepare ballots, 3-15-507.

25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the ballots then undrawn; but in any other case the ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom.

History: En. Sec. 1056, C. Civ. Proc. 1895; re-en. Sec. 6737, Rev. C. 1907; amd. Sec. 15, Ch. 35, L. 1919; re-en. Sec. 9340, R.C.M. 1921; re-en. Sec. 9340, R.C.M. 1935; R.C.M. 1947, 93-5007; amd. Sec. 13, Ch. 379, L. 1983.

25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots.

History: En. Sec. 1051, C. Civ. Proc. 1895; re-en. Sec. 6732, Rev. C. 1907; amd. Sec. 11, Ch. 35, L. 1919; re-en. Sec. 9335, R.C.M. 1921; re-en. Sec. 9335, R.C.M. 1935; amd. Sec. 4, Ch. 151, L. 1937; amd. Sec. 4, Ch. 3, L. 1939; R.C.M. 1947, 93-5002; amd. Sec. 14, Ch. 379, L. 1983; amd. Sec. 11, Ch. 3, L. 1985.

Cross-References

Drawing — how conducted, 3-15-503.

25-7-205. Persons drawn and approved to form jury. The first 12 persons, or such other number as will constitute the jury, who appear, as their names are drawn and called, and are approved as indifferent between the parties and not discharged or excused must be sworn and constitute the jury to try the issue.

History: En. Sec. 1052, C. Civ. Proc. 1895; re-en. Sec. 6733, Rev. C. 1907; re-en. Sec. 9336, R.C.M. 1921; re-en. Sec. 9336, R.C.M. 1935; R.C.M. 1947, 93-5003; amd. Sec. 93, Ch. 575, L. 1981.

Cross-References

Number of trial jury, 3-15-106.
Forming jury, 3-15-704.

25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors drawn and notified do not attend to form a jury, the judge or the jury commissioner, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make or order further drawings until a sufficient number is obtained.

(2) Each person notified shall attend at the time required by the notice and, unless excused by the court or set aside, shall serve as a juror upon the trial. For a neglect or refusal to do so, the person may be fined in the same manner as any other trial juror regularly drawn and notified. The person is subject to the same exceptions and challenges as any other trial juror.

History: En. Sec. 1057, C. Civ. Proc. 1895; re-en. Sec. 6738, Rev. C. 1907; re-en. Sec. 9341, R.C.M. 1921; re-en. Sec. 9341, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1937; amd. Sec. 5, Ch. 3, L. 1939; amd. Sec. 46, Ch. 344, L. 1977; R.C.M. 1947, 93-5008; amd. Sec. 15, Ch. 379, L. 1983; amd. Sec. 12, Ch. 3, L. 1985; amd. Sec. 404, Ch. 56, L. 2009.

Cross-References

Failure of juror to attend as contempt, 3-1-501.
Record of attendance to be kept by Clerk, 3-5-510.
Attachment and fine for failure to attend, 3-15-321.

25-7-207. Oath of jury. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ...., the plaintiff, and ...., the defendant, and render a true verdict according to the evidence.

History: En. Sec. 132, p. 69, Bannack Stat.; re-en. Sec. 160, p. 164, L. 1867; re-en. Sec. 196, p. 66, Cod. Stat. 1871; re-en. Sec. 247, p. 100, L. 1877; re-en. Sec. 247, 1st Div. Rev. Stat. 1879; re-en. Sec. 256, 1st Div. Comp. Stat. 1887; amd. Sec. 1064, C. Civ. Proc. 1895; re-en. Sec. 6745, Rev. C. 1907; re-en. Sec. 9348, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 604; R.C.M. 1947, 93-5015.

25-7-208. Ballots of jurors who have been sworn. The ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ballots with the names of the jurors thereon must be returned to the box from which they were first taken.

History: Ap. p. Sec. 1053, C. Civ. Proc. 1895; re-en. Sec. 6734, Rev. C. 1907; amd. Sec. 12, Ch. 35, L. 1919; re-en. Sec. 9337, R.C.M. 1921; re-en. Sec. 9337, R.C.M. 1935; Sec. 93-5004, R.C.M. 1947; Ap. p. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; Sec. 93-5005, R.C.M. 1947; R.C.M. 1947, 93-5004, 93-5005(part); amd. Sec. 16, Ch. 379, L. 1983.

Cross-References

Duty of Clerk — jury box, 3-15-404.

25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when the juror's name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ballots as soon as the jury is sworn.

History: En. Sec. 1055, C. Civ. Proc. 1895; re-en. Sec. 6736, Rev. C. 1907; amd. Sec. 14, Ch. 35, L. 1919; re-en. Sec. 9339, R.C.M. 1921; re-en. Sec. 9339, R.C.M. 1935; R.C.M. 1947, 93-5006; amd. Sec. 17, Ch. 379, L. 1983; amd. Sec. 405, Ch. 56, L. 2009.

Cross-References

Duty of Clerk — jury box, 3-15-404.

25-7-210. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, Ch. 5, L. 1935; re-en. Sec. 8927.1, R.C.M. 1935; R.C.M. 1947, 93-1811.

25-7-211 through 25-7-220 reserved.

25-7-221. Challenges to jurors and the jury. (1) Each party may challenge the jury or jurors as follows:

(a) the panel or array;
(b) for cause;
(c) peremptory.

(2) Challenges to individual jurors are for cause or peremptory.

History: En. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; R.C.M. 1947, 93-5010(part).

Cross-References

Selecting jury in criminal cases, Title 46, ch. 16, part 1.

25-7-222. Challenges to the array or panel. (1) A challenge to the array or panel may be made and the whole array or panel set aside by the court when the jury was not selected, drawn, summoned, or notified as prescribed by law. It is not a valid objection to a jury that it contains none of the jurors originally returned to the court or is only partially composed of such jurors.

(2) There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties.

History: Ap. p. Sec. 1058, C. Civ. Proc. 1895; re-en. Sec. 6739, Rev. C. 1907; re-en. Sec. 9342, R.C.M. 1921; re-en. Sec. 9342, R.C.M. 1935; Sec. 93-5009, R.C.M. 1947; Ap. p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; R.C.M. 1947, 93-5009, 93-5010(part).

Cross-References

Jury lists, Title 3, ch. 15, part 4.
Trial juries in District Court, Title 3, ch. 15, part 5.

25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

(a) by reason of current bills of gas, water, electricity, or telephone; or

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except the juror's interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party.

History: En. Sec. 134, p. 70, Bannack Stat.; re-en. Sec. 162, p. 164, L. 1867; re-en. Sec. 198, p. 66, Cod. Stat. 1871; re-en. Sec. 249, p. 100, L. 1877; re-en. Sec. 249, 1st Div. Rev. Stat. 1879; re-en. Sec. 258, 1st Div. Comp. Stat. 1887; amd. Sec. 1060, C. Civ. Proc. 1895; re-en. Sec. 6741, Rev. C. 1907; re-en. Sec. 9344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 602; re-en. Sec. 9344, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1953; R.C.M. 1947, 93-5011; amd. Sec. 94, Ch. 575, L. 1981; amd. Sec. 1, Ch. 106, L. 1983; amd. Sec. 406, Ch. 56, L. 2009.

Cross-References

Relationship by affinity, 1-1-219.
Grounds for objection to appointment of referee same as for trial juror, 25-7-702.
Agency, Title 28, ch. 10.
Suretyships, Title 28, ch. 11, part 4.
Debtor and creditor relationships, Title 31, ch. 2.

Partnerships, Title 35, ch. 10.
Employment defined, 39-2-101.
Marriage, Title 40, ch. 1.
Guardianships, Title 72, ch. 5.

25-7-224. Peremptory challenges to jurors. (1) Each party is entitled to four peremptory challenges, except as provided for under subsection (2).

(2) When a six-person jury is authorized by law, each side shall have two peremptory challenges. When the parties agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in open court, with the approval of the court, upon the number of peremptory challenges to be allowed, not to exceed four.

(3) Peremptory challenges shall be taken as provided in Rule 47(b), M.R.Civ.P.

History: Ap.p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; Ap.p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-5010(part); amd. Sec. 95, Ch. 575, L. 1981.

Cross-References

Number of trial jury, 3-15-106.

Part 3
Order and Conduct of Trial by Jury

Part Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.
Order of criminal trial, Title 46, ch. 16, part 4.

25-7-301. Order of trial. When the jury has been sworn, the trial must proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party who has the burden of proof may briefly state the party's case and the evidence by which the party expects to sustain it.

(2) The adverse party may then, or at the opening of the adverse party's case, briefly state the defense and the evidence that the adverse party expects to offer in support of it.

(3) The party who has the burden of proof shall first produce the party's evidence, and the adverse party shall then produce the adverse party's evidence.

(4) The parties shall then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in the charge only the instructions that are passed upon and settled at the settlement. In charging the jury, the court shall give to the jury all matters of law that the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof shall commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court shall determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: En. Sec. 1, Ch. 34, L. 1907; Sec. 6746, Rev. C. 1907; re-en. Sec. 9349, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 607, 608; re-en. Sec. 9349, R.C.M. 1935; amd. Sec. 84, Ch. 13, L. 1961; R.C.M. 1947, 93-5101; amd. Sec. 96, Ch. 575, L. 1981; amd. Sec. 407, Ch. 56, L. 2009.

Cross-References

Instructions to jury on how to evaluate evidence, 26-1-303.
Burdens of proof, Title 26, ch. 1, part 4.

25-7-302. Directed verdict when no issues of fact. Where, upon the trial of an issue by a jury, the case presents only questions of law, the judge may direct the jury to render a verdict in favor of the party entitled thereto.

History: En. Sec. 1104, C. Civ. Proc. Sec. 1895; re-en. Sec. 6761, Rev. C. 1907; re-en. Sec. 9364, R.C.M. 1921; re-en. Sec. 9364, R.C.M. 1935; R.C.M. 1947, 93-5205.

Cross-References

Issues defined, 25-7-101.

25-7-303. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time in respect to other business, but it is nevertheless open for every purpose connected with the case submitted to the jury until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day.

History: En. Sec. 142, p. 71, Bannack Stat.; re-en. Sec. 170, p. 166, L. 1867; re-en. Sec. 210, p. 68, Cod. Stat. 1871; re-en. Sec. 260, p. 103, L. 1877; re-en. Sec. 260, 1st Div. Rev. Stat. 1879; re-en. Sec. 269, 1st Div. Comp. Stat. 1887; amd. Sec. 1088, C. Civ. Proc. 1895; re-en. Sec. 6754, Rev. C. 1907; re-en. Sec. 9357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 617; re-en. Sec. 9357, R.C.M. 1935; R.C.M. 1947, 93-5109.

Cross-References

Nonjudicial day, 3-1-302.

25-7-304. Procedure when juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick and is unable to perform the juror's duty, the court may order the juror to be discharged. In that case, subject to the provisions of Rule 47(c), M.R.Civ.P., the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury impaneled.

History: En. Sec. 136, p. 70, Bannack Stat.; amd. Sec. 164, p. 165, L. 1867; re-en. Sec. 205, p. 68, Cod. Stat. 1871; re-en. Sec. 255, p. 103, L. 1877; re-en. Sec. 255, 1st Div. Rev. Stat. 1879; re-en. Sec. 264, 1st Div. Comp. Stat. 1887; re-en. Sec. 1086, C. Civ. Proc. 1895; re-en. Sec. 6752, Rev. C. 1907; re-en. Sec. 9355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 615; re-en. Sec. 9355, R.C.M. 1935; R.C.M. 1947, 93-5107; amd. Sec. 97, Ch. 575, L. 1981; amd. Sec. 408, Ch. 56, L. 2009.

25-7-305. Procedure when jury prevented from giving verdict. In all cases where the jury is discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial or after the case is submitted to it, the action may be again tried immediately or at a future time, as the court may direct.

History: En. Sec. 141, p. 71, Bannack Stat.; amd. Sec. 169, p. 166, L. 1867; re-en. Sec. 209, p. 68, Cod. Stat. 1871; re-en. Sec. 259, p. 104, L. 1877; re-en. Sec. 259, 1st Div. Rev. Stat. 1879; re-en. Sec. 268, 1st Div. Comp. Stat. 1887; re-en. Sec. 1087, C. Civ. Proc. 1895; re-en. Sec. 6753, Rev. C. 1907; re-en. Sec. 9356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 616; re-en. Sec. 9356, R.C.M. 1935; R.C.M. 1947, 93-5108.

Part 4
Conduct of Jury

Part Cross-References

New trial for jury misconduct, 25-11-102.

Conduct of jury in criminal proceedings, Title 46, ch. 16, part 5.

25-7-401. View by jury of the premises. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation or of the place at which any material fact occurred, it may order the jurors to be conducted in a body, under the charge of an officer and one person representing each party, to the place, which shall be shown to them by the persons appointed by the court for that purpose. While the jury is thus absent, no person other than the persons so appointed shall speak to it on any subject connected with the trial, and such persons shall not speak to the jury upon any matters connected with the subject of the action but may point out to the jury the property in litigation or the place at which any material fact occurred.

History: En. Sec. 204, p. 68, Cod. Stat. 1871; re-en. Sec. 254, p. 103, L. 1877; re-en. Sec. 254, 1st Div. Rev. Stat. 1879; re-en. Sec. 263, 1st Div. Comp. Stat. 1887; amd. Sec. 1081, C. Civ. Proc. 1895; re-en. Sec. 6747, Rev. C. 1907; re-en. Sec. 9350, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 610; re-en. Sec. 9350, R.C.M. 1935; R.C.M. 1947, 93-5102.

25-7-402. Admonition when jury permitted to separate. If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on any subject of the trial and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

History: En. Sec. 263, p. 104, L. 1877; re-en. Sec. 263, 1st Div. Rev. Stat. 1879; re-en. Sec. 272, 1st Div. Comp. Stat. 1887; re-en. Sec. 1082, C. Civ. Proc. 1895; re-en. Sec. 6748, Rev. C. 1907; re-en. Sec. 9351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 611; re-en. Sec. 9351, R.C.M. 1935; R.C.M. 1947, 93-5103.

Cross-References

Offense by juror for receiving unauthorized communication, 45-7-102.

25-7-403. Conduct of jury after case submitted to it. When the case is finally submitted to the jury, it may decide in court or retire for deliberation. If the jurors retire, they must be kept together in some convenient place, under charge of an officer, until at least two-thirds of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having the jurors under the officer's charge may not allow any communication to be made to the jurors and the officer may not make any communication, except to ask the jurors if they or two-thirds of them are agreed upon a verdict. The officer may not, before the jurors' verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

History: En. Sec. 138, p. 71, Bannack Stat.; re-en. Sec. 166, p. 165, L. 1867; re-en. Sec. 206, p. 68, Cod. Stat. 1871; re-en. Sec. 256, p. 103, L. 1877; re-en. Sec. 256, 1st Div. Rev. Stat. 1879; re-en. Sec. 265, 1st Div. Comp. Stat. 1887; amd. Sec. 1084, C. Civ. Proc. 1895; re-en. Sec. 6750, Rev. C. 1907; re-en. Sec. 9353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 613; re-en. Sec. 9353, R.C.M. 1935; R.C.M. 1947, 93-5105; amd. Sec. 409, Ch. 56, L. 2009.

Cross-References

Number of trial jury, 3-15-106.
Bribery and corrupt influence, Title 45, ch. 7, part 1.
Official misconduct, Title 45, ch. 7, part 4.

25-7-404. Papers which may be taken into jury room. Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them but none taken by any other person.

History: En. Sec. 139, p. 71, Bannack Stat.; re-en. Sec. 167, p. 166, L. 1867; amd. Sec. 207, p. 68, Cod. Stat. 1871; re-en. Sec. 257, p. 103, L. 1877; re-en. Sec. 257, 1st Div. Rev. Stat. 1879; re-en. Sec. 266, 1st Div. Comp. Stat. 1887; amd. Sec. 1083, C. Civ. Proc. 1895; re-en. Sec. 6749, Rev. C. 1907; re-en. Sec. 9352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 612; re-en. Sec. 9352, R.C.M. 1935; R.C.M. 1947, 93-5104.

25-7-405. Jury's request for further information. After the jury has retired for deliberation, if there be a disagreement among the jurors as to any part of the testimony or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of or after notice to the parties or counsel. Such information must be given in writing or taken down by the stenographer.

History: En. Sec. 140, p. 71, Bannack Stat.; amd. Sec. 168, p. 166, L. 1867; re-en. Sec. 208, p. 68, Cod. Stat. 1871; re-en. Sec. 258, p. 103, L. 1877; re-en. Sec. 258, 1st Div. Rev. Stat. 1879; re-en. Sec. 267, 1st Div. Comp. Stat. 1887; amd. Sec. 1085, C. Civ. Proc. 1895; re-en. Sec. 6751, Rev. C. 1907; re-en. Sec. 9354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 614; re-en. Sec. 9354, R.C.M. 1935; R.C.M. 1947, 93-5106.

Part 5
Jury's Verdict

Part Cross-References

Receiving verdict and giving instructions on nonjudicial days, 3-1-302.
Jury prevented from giving verdict, 25-7-305.
Verdict vacated upon granting of new trial, 25-11-102.
Verdict in criminal proceedings, Title 46, ch. 16, part 6.

25-7-501. Return of verdict — polling jury. (1) When the jurors or two-thirds of them have agreed upon a verdict, they must be conducted into court, their names must be called by the clerk, and the verdict must be rendered by the lead juror. The verdict must be in writing and signed by the lead juror and must be read by the clerk to the jury, and the inquiry made whether it is the jury's verdict.

(2) Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is the juror's verdict. If upon the inquiry or polling more than one-third of the jurors disagree to the verdict, the jury must be sent out again, but if disagreement is not expressed, the verdict is complete and the jury discharged from the case.

History: En. Sec. 143, p. 72, Bannack Stat.; re-en. Sec. 171, p. 166, L. 1867; re-en. Sec. 211, p. 69, Cod. Stat. 1871; amd. Sec. 261, p. 104, L. 1877; re-en. Sec. 261, 1st Div. Rev. Stat. 1879; re-en. Sec. 270, 1st Div. Comp. Stat. 1887; amd. Sec. 1089, C. Civ. Proc. 1895; re-en. Sec. 6755, Rev. C. 1907; re-en. Sec. 9358, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 618; re-en. Sec. 9358, R.C.M. 1935; R.C.M. 1947, 93-5110; amd. Sec. 410, Ch. 56, L. 2009.

Cross-References

Number of trial jury, 3-15-106.

25-7-502. Content of verdict — action or counterclaim for recovery of money. When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a counterclaim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

History: En. Sec. 149, p. 73, Bannack Stat.; re-en. Sec. 176, p. 167, L. 1867; re-en. Sec. 216, p. 70, Cod. Stat. 1871; re-en. Sec. 266, p. 105, L. 1877; re-en. Sec. 266, 1st Div. Rev. Stat. 1879; re-en. Sec. 276, 1st Div. Comp. Stat. 1887; amd. Sec. 1102, C. Civ. Proc. 1895; re-en. Sec. 6759, Rev. C. 1907; re-en. Sec. 9362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 626; re-en. Sec. 9362, R.C.M. 1935; R.C.M. 1947, 93-5203.

25-7-503. Content of verdict — action for recovery of personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or if the defendant, by the defendant's answer, claims a return of the property, the jury, if the verdict is in favor of the plaintiff or if the verdict is in favor of the defendant and the jury also finds that the defendant is entitled to a return of the property, shall find the value of the property. However, failure to find all the facts mentioned in this section may not invalidate the verdict. The jury may at the same time assess the damages, if damages are claimed in the complaint or answer, that the prevailing party has sustained by reason of the taking or detention of the property.

History: En. Sec. 150, p. 73, Bannack Stat.; re-en. Sec. 177, p. 167, L. 1867; re-en. Sec. 217, p. 70, Cod. Stat. 1871; re-en. Sec. 267, p. 105, L. 1877; re-en. Sec. 267, 1st Div. Rev. Stat. 1879; re-en. Sec. 277, 1st Div. Comp. Stat. 1887; re-en. Sec. 1103, C. Civ. Proc. 1895; re-en. Sec. 6760, Rev. C. 1907; re-en. Sec. 9363, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 627; re-en. Sec. 9363, R.C.M. 1935; R.C.M. 1947, 93-5204; amd. Sec. 411, Ch. 56, L. 2009.

Cross-References

Claim and delivery, Title 27, ch. 17.

Part 6
Trial by the Court

Part Cross-References

Issues defined, 25-7-101.
Province of court and jury, Title 26, ch. 1, part 2.

25-7-601. Waiver of findings of fact. The findings of fact may be waived by the several parties to an issue of fact by:

(1) failing to appear at the trial;
(2) consent in writing filed with the clerk;
(3) oral consent in open court entered in the minutes.

History: En. Sec. 1113, C. Civ. Proc. 1895; re-en. Sec. 6765, Rev. C. 1907; re-en. Sec. 9368, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 634; re-en. Sec. 9368, R.C.M. 1935; R.C.M. 1947, 93-5304.

25-7-602. Trial upon agreed statement of facts. When any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts and judgment shall be pronounced thereon as upon a special verdict or finding of facts. In such case, no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

History: En. Sec. 1117, C. Civ. Proc. 1895; re-en. Sec. 6769, Rev. C. 1907; re-en. Sec. 9372, R.C.M. 1921; re-en. Sec. 9372, R.C.M. 1935; R.C.M. 1947, 93-5308.

Cross-References

Submission of controversy without action, Title 27, ch. 7.
Declaratory judgments, Title 27, ch. 8.

Part 7
Referees

Part Cross-References

Contempt before referee, 3-1-512.
Fees of referee as allowable costs, 25-10-201.
Costs of postponement allowed, 25-10-203.
Person holding property to appear before referee, 27-18-503.
Instructions from referee upon dishonor of draft, 30-4-503.
Paternity hearing before referee, 40-6-111.

25-7-701. Oath of referee. Each referee, before acting, shall take and subscribe an oath or affirmation before some authorized officer, which must be filed with the clerk of the court that appointed the referee, that the referee will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to the referee, as required by law, to the best of the referee's knowledge and ability.

History: En. Sec. 224, p. 72, Cod. Stat. 1871; re-en. Sec. 275, p. 108, L. 1877; re-en. Sec. 275, 1st Div. Rev. Stat. 1879; re-en. Sec. 285, 1st Div. Comp. Stat. 1887; re-en. Sec. 1133, C. Civ. Proc. 1895; re-en. Sec. 6774, Rev. C. 1907; re-en. Sec. 9377, R.C.M. 1921; re-en. Sec. 9377, R.C.M. 1935; R.C.M. 1947, 93-5404; amd. Sec. 412, Ch. 56, L. 2009.

Cross-References

Officers who may administer oaths, 1-6-101.

25-7-702. Grounds for objection to appointment of referee. Either party may object to the appointment of any person as referee on the same grounds that the party might object to the person as a trial juror, as provided in 25-7-223.

History: En. Sec. 185, p. 169, L. 1867; re-en. Sec. 225, p. 72, Cod. Stat. 1871; re-en. Sec. 276, p. 109, L. 1877; re-en. Sec. 276, 1st Div. Rev. Stat. 1879; re-en. Sec. 286, 1st Div. Comp. Stat. 1887; en. Sec. 1137, C. Civ. Proc. 1895; re-en. Sec. 6778, Rev. C. 1907; re-en. Sec. 9381, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 641; re-en. Sec. 9381, R.C.M. 1935; R.C.M. 1947, 93-5408; amd. Sec. 413, Ch. 56, L. 2009.

25-7-703. Procedure upon objection. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections.

History: En. Sec. 186, p. 170, L. 1867; re-en. Sec. 226, p. 73, Cod. Stat. 1871; re-en. Sec. 277, p. 109, L. 1877; re-en. Sec. 277, 1st Div. Rev. Stat. 1879; re-en. Sec. 287, 1st Div. Comp. Stat. 1887; re-en. Sec. 1138, C. Civ. Proc. 1895; re-en. Sec. 6779, Rev. C. 1907; re-en. Sec. 9382, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 642; re-en. Sec. 9382, R.C.M. 1935; R.C.M. 1947, 93-5409.

CHAPTER 8
DEPOSIT IN COURT — DELIVERY TO PARTY

Part 1 — General Provisions

25-8-101. When court may order deposit or delivery.
25-8-102. Enforcement of court's order.
25-8-103. With whom money deposited.
25-8-104. Safekeeping of deposit by county treasurer.

Chapter Cross-References

Costs when money deposited with court, 25-10-107.

Part 1
General Provisions

25-8-101. When court may order deposit or delivery. When it is admitted by the pleading or shown upon the examination of a party that the party has in the party's possession or under the party's control any money or other thing capable of delivery that, being the subject of the litigation, is held by the party as trustee for another party or that belongs or is due to another party, the court may order the money or thing, upon motion, to be deposited in court or delivered to the party upon conditions that may be just, subject to the further direction of the court.

History: En. Sec. 115, p. 66, Bannack Stat.; re-en. Sec. 142, p. 160, L. 1867; re-en. Sec. 178, p. 61, Cod. Stat. 1871; re-en. Sec. 227, p. 95, L. 1877; re-en. Sec. 227, 1st Div. Rev. Stat. 1879; re-en. Sec. 235, 1st Div. Comp. Stat. 1887; amd. Sec. 970, C. Civ. Proc. 1895; re-en. Sec. 6705, Rev. C. 1907; re-en. Sec. 9308, R.C.M. 1921; Cal. C. Civ. Proc. 572; re-en. Sec. 9308, R.C.M. 1935; R.C.M. 1947, 93-4501; amd. Sec. 414, Ch. 56, L. 2009.

25-8-102. Enforcement of court's order. Where the court directs a deposit or delivery of money or where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: En. Sec. 229, p. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; R.C.M. 1947, 93-4504.

Cross-References

Judgment requiring performance of specific acts, 25-13-203.

25-8-103. With whom money deposited. (1) Whenever money is paid into or deposited in court, the money must be delivered to the clerk in person or to the clerk's deputies who are specially authorized by the deputy's appointment in writing to receive the money. The clerk or deputy shall, unless otherwise directed by law, deposit the money with the county treasurer to be held by the treasurer subject to the order of the court.

(2) The appointment must be filed with the county treasurer, who shall exhibit it and give to each person asking for the appointment a certified copy of the appointment. The appointment is in force until a revocation in writing is filed with the county treasurer, who shall upon receipt write "revoked" in ink across the face of the appointment.

History: En. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; R.C.M. 1947, 93-4503(part); amd. Sec. 415, Ch. 56, L. 2009.

Cross-References

Duties of County Treasurer, 7-6-2111.

25-8-104. Safekeeping of deposit by county treasurer. The treasurer shall keep each fund distinct and open an account for each fund. For the safekeeping of the money deposited with the treasurer, the treasurer's official bond is security.

History: Ap. p. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; Sec. 93-4503, R.C.M. 1947; Ap. p. Sec. 228, p. 95, L. 1877; re-en. Sec. 228, 1st. Div. Rev. Stat. 1879; re-en. Sec. 236, 1st Div. Comp. Stat. 1887; amd. Sec. 971, C. Civ. Proc. 1895; re-en. Sec. 6706, Rev. C. 1907; re-en. Sec. 9309, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 573; re-en. Sec. 9309, R.C.M. 1935; Sec. 93-4502, R.C.M. 1947; R.C.M. 1947, 93-4502(part), 93-4503(part); amd. Sec. 416, Ch. 56, L. 2009.

Cross-References

Official bonds, Title 2, ch. 9, part 5.
Duties of County Treasurer, 7-6-2111.

CHAPTER 9
JUDGMENT

Part 1 — General Provisions

25-9-101. Judgment to be on the merits.
25-9-102. Judgment for or against married person.
25-9-103. Death of party after verdict — no lien.
25-9-104. Procedure after judgment on issue of law.
25-9-105. Validation of defective judgments affecting realty.

Part 2 — Contents of Judgment

25-9-201. Whose rights determined in judgment.
25-9-202. Designation in judgment of principal debtors and sureties.
25-9-203. How amount expressed.
25-9-204. Clerk to include interest in judgment.
25-9-205. Amount of interest.

Part 3 — Entry of Judgment and Satisfaction — Lien

25-9-301. Docketing of judgment — lien — expiration.
25-9-302. Filing of transcript of docket in another county — lien — expiration.
25-9-303. Filing of transcript of docket of federal court — lien — expiration.
25-9-304 through 25-9-310 reserved.
25-9-311. Entry of satisfaction of judgment in docket.

Part 4 — Periodic Payment of Damages — Medical Malpractice Damage Limitations

25-9-401. Definitions.
25-9-402. Findings by trier of fact — civil actions.
25-9-403. Request for periodic payment of future damages — nonmalpractice claims.
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Part 8 — Foreign Capital Depository — Asset Protection (Repealed)

Chapter Cross-References

Power of court to compel obedience, 3-1-111.
Disobedience as contempt, 3-1-501.
Judgments of contempt conclusive, 3-1-523.
Territorial extent, 3-5-312.
Judgment book, 3-5-507.

Part 1
General Provisions

25-9-101. Judgment to be on the merits. In every case, judgment must be rendered on the merits, except as provided in 25-1-104 and Rule 41, M.R.Civ.P.

History: En. Sec. 122, p. 68, Bannack Stat.; re-en. Sec. 149, p. 162, L. 1867; re-en. Sec. 185, p. 63, Cod. Stat. 1871; re-en. Sec. 235, p. 96, L. 1877; re-en. Sec. 235, 1st Div. Rev. Stat. 1879; re-en. Sec. 243, 1st Div. Comp. Stat. 1887; re-en. Sec. 1005, C. Civ. Proc. 1895; re-en. Sec. 6715, Rev. C. 1907; re-en. Sec. 9318, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 582; re-en. Sec. 9318, R.C.M. 1935; R.C.M. 1947, 93-4706; amd. Sec. 2, Ch. 17, L. 2011.

25-9-102. Judgment for or against married person. Judgment for or against a married person may be rendered and enforced as if such person were single.

History: En. Sec. 1006, C. Civ. Proc. 1895; re-en. Sec. 6716, Rev. C. 1907; re-en. Sec. 9319, R.C.M. 1921; re-en. Sec. 9319, R.C.M. 1935; amd. Sec. 54, Ch. 535, L. 1975; R.C.M. 1947, 93-4707.

Cross-References

Capacity of married person to be party, 25-5-201.
Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-9-103. Death of party after verdict — no lien. If a party dies after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment. The judgment is not a lien on the real property of the deceased party but is payable in the course of administration on the deceased party's estate.

History: En. Sec. 178, p. 78, Bannack Stat.; amd. Sec. 202, p. 174, L. 1867; re-en. Sec. 242, p. 77, Cod. Stat. 1871; re-en. Sec. 293, p. 116, L. 1877; re-en. Sec. 293, 1st Div. Rev. Stat. 1879; re-en. Sec. 305, 1st Div. Comp. Stat. 1887; re-en. Sec. 1195, C. Civ. Proc. 1895; re-en. Sec. 6805, Rev. C. 1907; re-en. Sec. 9408, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 669; re-en. Sec. 9408, R.C.M. 1935; R.C.M. 1947, 93-5706; amd. Sec. 417, Ch. 56, L. 2009.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Estates and probate proceedings, Title 72.

25-9-104. Procedure after judgment on issue of law. On a judgment for the plaintiff upon an issue of law, the plaintiff may proceed in the manner prescribed by Rule 55(a) and (b), M.R.Civ.P., upon the failure of the defendant to answer. If judgment is for the defendant upon an issue of law and the taking of an account or the proof of any fact is necessary to enable the court to complete the judgment, a reference may be ordered, as provided in Rule 55(b).

History: En. Sec. 272, p. 107, L. 1877; re-en. Sec. 272, 1st Div. Rev. Stat. 1879; re-en. Sec. 282, 1st Div. Comp. Stat. 1887; re-en. Sec. 1118, C. Civ. Proc. 1895; re-en. Sec. 6770, Rev. C. 1907; re-en. Sec. 9373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 636; re-en. Sec. 9373, R.C.M. 1935; R.C.M. 1947, 93-5309; amd. Sec. 418, Ch. 56, L. 2009.

25-9-105. Validation of defective judgments affecting realty. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to July 1, 1973, recorded in the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality, or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired; and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality, or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree or of the record thereof may be read in evidence with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 146, L. 1973; R.C.M. 1947, 93-5710.5.

Cross-References

Recording real property transfers, Title 70, ch. 21.

Part 2
Contents of Judgment

Part Cross-References

What considered adjudged in judgment, 26-3-102.

25-9-201. Whose rights determined in judgment. Subject to the provisions of Rule 54(b), M.R.Civ.P., judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and it may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 98, Ch. 575, L. 1981.

25-9-202. Designation in judgment of principal debtors and sureties. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part).

Cross-References

Principal bound when surety bound, 26-3-104.
Suretyship, Title 28, ch. 11, part 4.

25-9-203. How amount expressed. In judgments, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; R.C.M. 1947, 93-4710(part).

Cross-References

Money of account, Title 30, ch. 12, part 6.

25-9-204. Clerk to include interest in judgment. The clerk shall include in the judgment entered up by the clerk any interest on the verdict or decision of the court, from the time it was rendered or made.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part); amd. Sec. 419, Ch. 56, L. 2009.

Cross-References

Execution to include interest, 25-13-304.
Execution sale invalidated, 25-13-713.
Limitation on judgment against joint debtor, 25-15-106.
Interest on torts, 27-1-210.
Judgment when debt not yet due, 27-18-901.

25-9-205. Amount of interest. (1) (a) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state and on the cost incurred to obtain or enforce a judgment at a rate equal to the rate for bank prime loans published by the federal reserve system in its statistical release H.15 Selected Interest Rates or in any publication that may supersede it on the day judgment is entered, plus 3%. The interest may not be compounded.

(b) The rate for bank prime loans established in subsection (1)(a) must be set as of January 1 of each year and remain in effect until December 31 of each year.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

History: En. Sec. 2588, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5214, Rev. C. 1907; re-en. Sec. 7729, R.C.M. 1921; Cal. Civ. C. Sec. 1920; amd. Sec. 1, Ch. 143, L. 1933; re-en. Sec. 7729, R.C.M. 1935; R.C.M. 1947, 47-128; amd. Sec. 1, Ch. 373, L. 1979; amd. Sec. 1, Ch. 649, L. 1979; Sec. 31-1-110, MCA 1979; redes. 25-9-205 by Code Commissioner, 1979; amd. Sec. 4, Ch. 392, L. 2005; amd. Sec. 1, Ch. 446, L. 2017.

Cross-References

Execution of property against judgment debtor to include interest, 25-13-304.
Interest on torts, 27-1-210.
Validity of interest rate set by contract, 27-1-213.
Interest rates on loans of money, Title 31, ch. 1, part 1.

Part 3
Entry of Judgment and Satisfaction — Lien

Part Cross-References

Judgment book defined, 3-5-507.
Docket, 3-5-508.
Docket to be available for inspection, 3-5-509.
Execution of lien upon real property, 25-13-305.

25-9-301. Docketing of judgment — lien — expiration. (1) Immediately after the entry of the judgment in the judgment book, the clerk shall make entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien ceases. Except as provided in 61-6-123, the lien continues for 10 years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied.

History: En. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 671; re-en. Sec. 9410, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, December 10, 1965, eff. January 1, 1966; R.C.M. 1947, 93-5708; amd. Sec. 1, Ch. 631, L. 1993; amd. Sec. 1, Ch. 60, L. 1995; amd. Sec. 6, Ch. 515, L. 2001.

Cross-References

Enforcement of support, Title 40, ch. 5.
Liens, Title 71, ch. 3.

25-9-302. Filing of transcript of docket in another county — lien — expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in 61-6-123, the lien continues for 10 years from the date of the entry of the judgment unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied.

History: En. Sec. 181, p. 78, Bannack Stat.; re-en. Sec. 207, p. 175, L. 1867; re-en. Sec. 247, p. 78, L. 1871; en. Sec. 1, p. 40, L. 1876; re-en. Sec. 298, p. 117, L. 1877; re-en. Sec. 298, 1st Div. Rev. Stat. 1879; re-en. Sec. 310, 1st Div. Comp. Stat. 1887; amd. Sec. 1200, C. Civ. Proc. 1895; re-en. Sec. 6810, Rev. C. 1907; re-en. Sec. 9413, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 674; re-en. Sec. 9413, R.C.M. 1935; R.C.M. 1947, 93-5712; amd. Sec. 2, Ch. 631, L. 1993; amd. Sec. 2, Ch. 60, L. 1995; amd. Sec. 1, Ch. 45, L. 2003; amd. Sec. 2, Ch. 510, L. 2003.

Cross-References

Enforcement of support, Title 40, ch. 5.

25-9-303. Filing of transcript of docket of federal court — lien — expiration. (1) A transcript of the original docket of a judgment that is rendered in the circuit or district court of the United States, ninth circuit, district of Montana, and that is certified by the clerk of court may be filed with the district court clerk of any county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for 10 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied.

History: En. Sec. 1, Ch. 14, L. 1907; re-en. Sec. 6812, Rev. C. 1907; re-en. Sec. 9415, R.C.M. 1921; re-en. Sec. 9415, R.C.M. 1935; R.C.M. 1947, 93-5714; amd. Sec. 3, Ch. 631, L. 1993; amd. Sec. 3, Ch. 60, L. 1995; amd. Sec. 3, Ch. 510, L. 2003.

Cross-References

Enforcement of support, Title 40, ch. 5.

25-9-304 through 25-9-310 reserved.

25-9-311. Entry of satisfaction of judgment in docket. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor or by the judgment creditor's endorsement on the face or on the margin of the record of the judgment or by the judgment creditor's attorney unless a revocation of the attorney's authority is filed. Whenever a judgment is satisfied in fact otherwise than upon an execution, the party or attorney shall give the acknowledgment or make the endorsement, and upon motion, the court may compel the acknowledgment or endorsement or may order the entry of satisfaction to be made without the acknowledgment or endorsement.

History: **En. Sec. 182, p. 79, Bannack Stat.; amd. Sec. 208, p. 175, L. 1867; re-en. Sec. 248, p. 78, L. 1871; en. Sec. 299, p. 117, L. 1877; re-en. Sec. 299, 1st Div. Rev. Stat. 1879; re-en. Sec. 311, 1st Div. Comp. Stat. 1887; re-en. Sec. 1201, C. Civ. Proc. 1895; re-en. Sec. 6811, Rev. C. 1907; re-en. Sec. 9414, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 675; re-en. Sec. 9414, R.C.M. 1935; R.C.M. 1947, 93-5713; amd. Sec. 420, Ch. 56, L. 2009.**

Cross-References

Execution of judgment, Title 25, ch. 13.

Part 4

Periodic Payment of Damages — Medical Malpractice Damage Limitations

Part Cross-References

Damages, Title 27, ch. 1, part 2.
Montana Medical Legal Panel Act, Title 27, ch. 6.

25-9-401. Definitions. In this part:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money to the judgment creditor at regular intervals.

History: **En. Sec. 1, Ch. 634, L. 1987.**

Cross-References

Right to future damages, 27-1-203.

25-9-402. Findings by trier of fact — civil actions. In any action for personal injury, property damage, or wrongful death where liability is found after trial and in which $100,000 or more in future damages is awarded to the claimant, the trier of fact shall make a separate finding as to the amount of any future damages so awarded and state whether the amount of future damages has been reduced to present value.

History: **En. Sec. 2, Ch. 634, L. 1987.**

25-9-403. Request for periodic payment of future damages — nonmalpractice claims. (1) Except as provided in 25-9-412, a party to an action for personal injury, property damage, or wrongful death in which $100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon a request, the court may enter an order for periodic payment of future damages if the court finds that periodic payment is in the best interests of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages and as to whether an order for periodic payment of future damages is in the best interests of the claimant.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments must be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of the creditor's estate.

History: **En. Sec. 3, Ch. 634, L. 1987; amd. Sec. 3, Ch. 461, L. 1995.**

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

25-9-404. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and the claimant's attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages.

History: En. Sec. 4, Ch. 634, L. 1987; amd. Sec. 421, Ch. 56, L. 2009.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

25-9-405. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this part is enforceable only as to amounts:

(1) to secure payment of alimony, maintenance, or child support; or

(2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care.

History: En. Sec. 6, Ch. 634, L. 1987.

25-9-406. Failure to pay — penalty. If the court finds that the insurer that sold the annuity to the judgment debtor has unjustifiably exhibited a continuing pattern of failing to make periodic payments, the court shall find the insurer in contempt of court and order the insurer to pay past-due payments and the judgment creditor's damages caused by the failure to make payments, including court costs and attorney fees.

History: En. Sec. 5, Ch. 634, L. 1987.

25-9-407 through 25-9-410 reserved.

25-9-411. *(Temporary)* **Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed the applicable noneconomic damage limit as provided in subsection (1)(c). All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed the applicable noneconomic damage limit as provided in subsection (1)(c). This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(c) The noneconomic damage limit is $300,000. The noneconomic damage limit increases as follows:

(i) $350,000, effective January 1, 2026;

(ii) $400,000, effective January 1, 2027;

(iii) $450,000, effective January 1, 2028;

(iv) $500,000, effective January 1, 2029; and

(v) effective January 1, 2030, and on January 1 of each subsequent year, the limit must be increased by 2% of the prior year's limit. The court administrator's office shall publish the adjusted limit within 14 days of January 1 of each year. Regardless of when the court administrator's office publishes the adjusted limit, the adjusted limit must go into effect on January 1 of each year.

(d) The limit on past and future noneconomic damages in subsection (1)(a) applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant first files a claim with the Montana medical legal panel. If the claim is not subject to the Montana Medical Legal Panel Act provided for in Title 27, chapter 6, the limit on past and future noneconomic damages pursuant to subsection (1)(a) that is applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant first files suit in Montana district court or any other court with jurisdiction over the case.

(2) (a) For the purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of the limit applicable to the claimant's claim must be reduced to the limit applicable as provided in subsection (1), after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the applicable limit, past noneconomic loss must then be reduced. If a combination of awards is reduced to the applicable limit, a claimant's share of the applicable limit must be the same percentage as the claimant's share of the combined awards before reduction.

(b) For each claimant, further reductions must be made in the following order:
(i) first, reductions under 27-1-702;
(ii) second, reductions under 27-1-703; and
(iii) third, setoffs and credits to which a defendant is entitled.

(3) An award of future damages for noneconomic loss may not be discounted to present value.

(4) The applicable limit provided for in subsection (1) may not be disclosed to a jury.

(5) As used in this section, the following definitions apply:
(a) "Claimant" includes but is not limited to:
(i) a person suffering bodily injury;
(ii) a person making a claim as a result of bodily injury to or the death of another;
(iii) a person making a claim on behalf of someone who suffered bodily injury or death;
(iv) the representative of the estate of a person who suffered bodily injury or death; or
(v) a person bringing a wrongful death action.

(b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

(c) "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death.

(d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:
(i) physical and mental pain or suffering;
(ii) emotional distress;
(iii) inconvenience;
(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;
(v) loss of society, companionship, and consortium, other than household services;
(vi) injury to reputation; and
(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)*

25-9-411. *(Effective on occurrence of contingency)* **Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed the applicable noneconomic damage limit as provided in subsection (1)(c). All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed the applicable noneconomic damage limit as provided in subsection (1)(c). This limitation applies whether:
(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or
(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(c) The noneconomic damage limit is $300,000, effective on March 27, 2025. The noneconomic damage limit increases as follows:
(i) $350,000, effective January 1, 2026;

(ii) $400,000, effective January 1, 2027;
(iii) $450,000, effective January 1, 2028;
(iv) $500,000, effective January 1, 2029; and
(v) effective January 1, 2030, and on January 1 of each subsequent year, the limit must be increased by 2% of the prior year's limit. The court administrator's office shall publish the adjusted limit within 14 days of January 1 of each year. Regardless of when the court administrator's office publishes the adjusted limit, the adjusted limit must go into effect on January 1 of each year.

(d) The limit on past and future noneconomic damages in subsection (1)(a) applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant first files a claim with the Montana medical legal panel. If the claim is not subject to the Montana Medical Legal Panel Act provided for in Title 27, chapter 6, the limit on past and future noneconomic damages pursuant to subsection (1)(a) that is applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant first files suit in Montana district court or any other court with jurisdiction over the case.

(2) (a) For the purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of the limit applicable to the claimant's claim must be reduced to the limit as provided in subsection (1), after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the applicable limit, past noneconomic loss must then be reduced. If a combination of awards is reduced to the applicable limit, a claimant's share of the applicable limit must be the same percentage as the claimant's share of the combined awards before reduction.

(b) For each claimant, further reductions must be made in the following order:
(i) first, reductions under 27-1-702; and
(ii) second, setoffs and credits to which a defendant is entitled.

(3) An award of future damages for noneconomic loss may not be discounted to present value.

(4) The applicable limit provided for in subsection (1) may not be disclosed to a jury.

(5) As used in this section, the following definitions apply:
(a) "Claimant" includes but is not limited to:
(i) a person suffering bodily injury;
(ii) a person making a claim as a result of bodily injury to or the death of another;
(iii) a person making a claim on behalf of someone who suffered bodily injury or death;
(iv) the representative of the estate of a person who suffered bodily injury or death; or
(v) a person bringing a wrongful death action.

(b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

(c) "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death.

(d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:
(i) physical and mental pain or suffering;
(ii) emotional distress;
(iii) inconvenience;
(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;
(v) loss of society, companionship, and consortium, other than household services;
(vi) injury to reputation; and
(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider.

History: En. Sec. 1, Ch. 461, L. 1995; amd. Sec. 3, Ch. 429, L. 1997; amd. Sec. 1, Ch. 34, L. 2025; amd. Sec. 1, Ch. 294, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 34, L. 2025. Amendment effective March 27, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 294, L. 2025. Amendment effective May 1, 2025.

Contingent Applicability: Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

Contingent Effective Date: Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

25-9-412. Periodic payment of future damages in medical malpractice cases. (1) A party to an action for a malpractice claim, as defined in 25-9-411, in which $50,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon a request, the court shall enter an order for periodic payment of future damages. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments must be made.

(4) The court shall order that periodic payment of future damages be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court shall order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of the creditor's estate.

History: En. Sec. 2, Ch. 461, L. 1995.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

Part 5
Uniform Enforcement of Foreign Judgments

Part Cross-References

Effect of specific kinds of judicial records, Title 26, ch. 3, part 2.

Actions upon judgments, 27-2-201.

25-9-501. Short title. This part may be cited as the "Uniform Enforcement of Foreign Judgments Act".

History: En. Sec. 1, Ch. 66, L. 1989.

25-9-502. Definition. In this part, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

History: En. Sec. 2, Ch. 66, L. 1989.

25-9-503. Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

History: En. Sec. 3, Ch. 66, L. 1989.

25-9-504. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on the judgment creditor's behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to the judgment debtor's attorney of record, if any, each at the person's last-known address, by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution may not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing.

History: En. Sec. 4, Ch. 66, L. 1989; amd. Sec. 422, Ch. 56, L. 2009.

25-9-505. Stay. (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

History: En. Sec. 5, Ch. 66, L. 1989.

25-9-506. Fees. (1) Except as provided for in subsection (2), a person filing a foreign judgment shall pay to the clerk of court a fee of $60.

(2) Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

(3) Fees collected by the clerk of district court must be forwarded to the department of revenue for deposit in the state general fund.

History: En. Sec. 6, Ch. 66, L. 1989; amd. Sec. 71, Ch. 382, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 29, Ch. 585, L. 2001; amd. Sec. 5, Ch. 163, L. 2005.

25-9-507. Optional procedure. The right of a judgment creditor to bring an action to enforce the judgment creditor's judgment instead of proceeding under this part remains unimpaired.

History: En. Sec. 7, Ch. 66, L. 1989; amd. Sec. 423, Ch. 56, L. 2009.

25-9-508. Uniformity of interpretation. This part must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 66, L. 1989.

Part 6
Uniform Foreign-Country Money Judgments Recognition Act

Part Cross-References

Effect of specific kinds of judicial records, Title 26, ch. 3, part 2.
Actions upon judgments, 27-2-201.

25-9-601. Short title. This part may be cited as the "Uniform Foreign-Country Money Judgments Recognition Act".

History: En. Sec. 1, Ch. 441, L. 1993; amd. Sec. 1, Ch. 176, L. 2009.

25-9-602. Definitions. As used in this part, the following definitions apply:

(1) "Foreign country" means a government other than:

(a) the United States;

(b) a state, district, commonwealth, territory, or insular possession of the United States; or

(c) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States constitution.

(2) "Foreign-country judgment" means any judgment of a foreign country.

History: En. Sec. 2, Ch. 441, L. 1993; amd. Sec. 2, Ch. 176, L. 2009.

25-9-603. Applicability. (1) Except as provided in subsection (2), this part applies to a foreign-country judgment to the extent that the judgment:

(a) grants or denies recovery of a sum of money; and

(b) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(2) This part does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(a) a judgment for taxes;

(b) a fine or other penalty; or

(c) a judgment for dissolution of marriage, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this part applies to the foreign-country judgment.

History: En. Sec. 3, Ch. 441, L. 1993; amd. Sec. 72, Ch. 382, L. 1997; amd. Sec. 6, Ch. 163, L. 2005; amd. Sec. 3, Ch. 176, L. 2009.

25-9-604. Repealed. Sec. 10, Ch. 176, L. 2009.

History: En. Sec. 4, Ch. 441, L. 1993.

25-9-605. Standards for recognition of foreign-country judgment. (1) Except as provided in subsections (2) and (3), a court of this state shall recognize a foreign-country judgment to which this part applies.

(2) A court of this state may not recognize a foreign-country judgment if:

(a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign-country judgment if:

(a) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(b) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(c) the judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that court;

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(g) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(h) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) exists.

History: En. Sec. 5, Ch. 441, L. 1993; amd. Sec. 4, Ch. 176, L. 2009.

25-9-606. Personal jurisdiction. (1) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(a) the defendant was served with process personally in the foreign country;

(b) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(c) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in or was organized under the laws of the foreign country;

(e) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country; or

(f) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action or claim for relief arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) as sufficient to support a foreign-country judgment.

History: En. Sec. 6, Ch. 441, L. 1993; amd. Sec. 5, Ch. 176, L. 2009.

25-9-607. Stay of proceedings pending appeal of foreign-country judgment. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

History: En. Sec. 7, Ch. 441, L. 1993; amd. Sec. 6, Ch. 176, L. 2009.

25-9-608. Saving clause. This part does not prevent the recognition of a foreign-country judgment in situations not covered by this part.

History: En. Sec. 8, Ch. 441, L. 1993; amd. Sec. 16, Ch. 19, L. 2011.

25-9-609. Uniformity of interpretation. This part must be construed to effectuate the general purpose to make uniform the law of those states that enact it.

History: En. Sec. 9, Ch. 441, L. 1993; amd. Sec. 73, Ch. 382, L. 1997; amd. Sec. 7, Ch. 163, L. 2005.

25-9-610. Procedure for recognition of foreign-country judgment. (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

History: En. Sec. 7, Ch. 176, L. 2009.

25-9-611. Effect of recognition of foreign-country judgment. If the court in a proceeding under 25-9-610 finds that the foreign-country judgment is entitled to recognition under this part then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

History: En. Sec. 8, Ch. 176, L. 2009.

25-9-612. Statute of limitations. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

History: En. Sec. 9, Ch. 176, L. 2009.

Part 7
Uniform Foreign-Money Claims Act

25-9-701. Short title. This part may be cited as the "Uniform Foreign-Money Claims Act".

History: En. Sec. 1, Ch. 152, L. 1993.

25-9-702. Definitions. In this part, the following definitions apply:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day preceding the date on which money, in accordance with this part, is:

(a) paid to a claimant in an action or distribution proceeding;

(b) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) used to recoup, setoff, or counterclaim in different money in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims are asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to 25-9-705.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

History: En. Sec. 2, Ch. 152, L. 1993.

25-9-703. Scope. (1) This part applies only to a foreign-money claim in an action or distribution proceeding.

(2) This part applies to foreign-money issues even if other law under the conflict-of-laws rules of this state applies to other issues in the action or distribution proceeding.

History: En. Sec. 3, Ch. 152, L. 1993.

25-9-704. Variation by agreement. (1) The effect of this part may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different money for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

History: En. Sec. 4, Ch. 152, L. 1993.

25-9-705. Determining money of claim. (1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(a) regularly used between the parties as a matter of usage or course of dealing;

(b) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) in which the loss was ultimately felt or will be incurred by the party claimant.

History: **En. Sec. 5, Ch. 152, L. 1993.**

25-9-706. Determining amount of money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

History: **En. Sec. 6, Ch. 152, L. 1993.**

25-9-707. Asserting and defending foreign-money claim. (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

History: **En. Sec. 7, Ch. 152, L. 1993.**

25-9-708. Judgments and awards on foreign-money claims — times of money conversion — form of judgment. (1) Except as provided in subsection (3), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim must be netted by converting the money of the smaller into the money of the larger and by subtracting the smaller from the larger and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with subsection (1):

IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see 25-9-710) % a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by 25-9-706(1) or (2), the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be filed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

History: **En. Sec. 8, Ch. 152, L. 1993.**

25-9-709. Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

History: **En. Sec. 9, Ch. 152, L. 1993.**

25-9-710. Prejudgment and judgment interest. (1) Except as provided in subsection (2), recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, with respect to a foreign-money claim, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment or governing conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

History: **En. Sec. 10, Ch. 152, L. 1993.**

25-9-711. Enforcement of foreign judgments. (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in 25-9-708, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be filed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

History: **En. Sec. 11, Ch. 152, L. 1993.**

Cross-References

Actions on judgments, 27-2-201.

25-9-712. Determining United States dollar value of foreign-money claims for limited purposes. (1) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking must be ascertained as provided in subsections (3) and (4).

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day preceding the filing of a request or application for the issuance of process, for the determination of costs, or for an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and

setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

History: **En. Sec. 12, Ch. 152, L. 1993.**

25-9-713. Effect of currency revalorization. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

History: **En. Sec. 13, Ch. 152, L. 1993.**

25-9-714. Supplementary general principles of law. Unless displaced by particular provisions of this part, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

History: **En. Sec. 14, Ch. 152, L. 1993.**

25-9-715. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: **En. Sec. 15, Ch. 152, L. 1993.**

Part 8
Foreign Capital Depository — Asset Protection (Repealed)

25-9-801. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 47, Ch. 382, L. 1997.**

25-9-802. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 48, Ch. 382, L. 1997.**

25-9-803. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 49, Ch. 382, L. 1997.**

25-9-804. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 50, Ch. 382, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 30, Ch. 585, L. 2001.**

25-9-805. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 51, Ch. 382, L. 1997.**

25-9-806. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 52, Ch. 382, L. 1997.**

25-9-807. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 53, Ch. 382, L. 1997.**

25-9-808. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 54, Ch. 382, L. 1997.**

25-9-809. Repealed. Sec. 23, Ch. 163, L. 2005.

History: **En. Sec. 55, Ch. 382, L. 1997.**

CHAPTER 10
COSTS

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Part 1
Imposition of Costs

25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in the plaintiff's favor in the following cases:

(1) in an action for the recovery of real property or damages to real property;

(2) in an action to recover the possession of personal property when the value of the property exceeds $50, with the value determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action that involves the title or possession or right of possession of real estate;

(6) in an action that involves the legality of any tax, impost, assessment, toll, or municipal fine;

(7) in quo warranto proceedings;

(8) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

(9) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if the plaintiff is entitled to attorney fees under 25-10-303.

History: En. Sec. 401, p. 126, Bannack Stat.; re-en. Sec. 470, p. 229, L. 1867; re-en. Sec. 546, p. 147, Cod. Stat. 1871; re-en. Sec. 482, p. 168, L. 1877; re-en. Sec. 482, 1st Div. Rev. Stat. 1879; amd. Sec. 10, p. 11, L. 1881; re-en. Sec. 495, 1st Div. Comp. Stat. 1887; en. Sec. 1851, C. Civ. Proc. 1895; re-en. Sec. 7154, Rev. C. 1907; re-en. Sec. 9787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1022; re-en. Sec. 9787, R.C.M. 1935; R.C.M. 1947, 93-8602; amd. Sec. 1, Ch. 528, L. 1981; amd. Sec. 424, Ch. 56, L. 2009.

Cross-References

Actions and special proceedings defined, 27-1-102.
No costs in agreed case prior to trial, 27-7-103.
Action for claim and delivery, Title 27, ch. 17.
Costs upon dissolution of injunction, 27-19-406.
Costs upon issuance of writ of mandamus, 27-26-402.
Costs in quo warranto proceedings, 27-28-205.
Forcible entry and unlawful detainer, Title 70, ch. 27.
Quieting title to real property, Title 70, ch. 28.
Costs on foreclosure of lien, 71-3-124.
Trust for unlocatable mineral, leasehold, and royalty interest owners — penalty, 82-1-305.

25-10-102. When costs allowed, of course, to defendant. Costs must be allowed, of course, to the defendant upon a judgment in the defendant's favor in the actions mentioned in 25-10-101.

History: En. Sec. 472, p. 229, L. 1867; re-en. Sec. 548, p. 148, Cod. Stat. 1871; re-en. Sec. 484, p. 169, L. 1877; re-en. Sec. 484, 1st Div. Rev. Stat. 1879; re-en. Sec. 497, 1st Div. Comp. Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7155, Rev. C. 1907; re-en. Sec. 9788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1024; re-en. Sec. 9788, R.C.M. 1935; R.C.M. 1947, 93-8603; amd. Sec. 425, Ch. 56, L. 2009.

25-10-103. When costs discretionary. Unless otherwise provided, in actions other than those mentioned in 25-10-101, costs may be allowed or not and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages when the plaintiff fails to recover more than $50 or in an action to recover the possession of personal property when the value of the property is not more than $50.

History: En. Sec. 404, p. 127, Bannack Stat.; en. Sec. 473, p. 229, L. 1867; re-en. Sec. 549, p. 148, Cod. Stat. 1871; re-en. Sec. 485, p. 169, L. 1877; re-en. Sec. 485, 1st Div. Rev. Stat. 1879; amd. Sec. 11, p. 11, L. 1881; re-en. Sec. 498, 1st Div. Comp. Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7156, Rev. C. 1907; re-en. Sec. 9789, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1025; re-en. Sec. 9789, R.C.M. 1935; R.C.M. 1947, 93-8604; amd. Sec. 4, Ch. 402, L. 1979.

Cross-References

Actions and special proceedings defined, 27-1-102.
Costs upon dissolution of injunction, 27-19-406.
Costs upon issuance of writ of mandamus, 27-26-402.

25-10-104. When costs of appeal discretionary. (1) In the following cases, the costs of appeal are in the discretion of the court:

(a) when a new trial is ordered;

(b) when a judgment is modified.

(2) In all other cases, the successful party shall recover from the other party the successful party's costs.

History: En. Sec. 406, p. 127, Bannack Stat.; amd. Sec. 475, p. 229, L. 1867; re-en. Sec. 551, p. 148, Cod. Stat. 1871; re-en. Sec. 487, p. 169, L. 1877; re-en. Sec. 487, 1st Div. Rev. Stat. 1879; re-en. Sec. 500, 1st Div. Comp. Stat. 1887; amd. Sec. 1855, C. Civ. Proc. 1895; re-en. Sec. 7158, Rev. C. 1907; re-en. Sec. 9791, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1027; re-en. Sec. 9791, R.C.M. 1935; R.C.M. 1947, 93-8606; amd. Sec. 426, Ch. 56, L. 2009.

Cross-References

How costs on appeal claimed, 25-10-503.
Appeal to Supreme Court, Title 25, ch. 12.

25-10-105. Costs of review other than by appeal. When the decision of a court of limited jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs must be allowed as in cases on appeal and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

History: En. Sec. 411, p. 127, Bannack Stat.; re-en. Sec. 480, p. 230, L. 1867; re-en. Sec. 556, p. 149, Cod. Stat. 1871; re-en. Sec. 493, p. 170, L. 1877; re-en. Sec. 493, 1st Div. Rev. Stat. 1879; re-en. Sec. 506, 1st Div. Comp. Stat. 1887; re-en. Sec. 1860, C. Civ. Proc. 1895; re-en. Sec. 7163, Rev. C. 1907; re-en. Sec. 9796, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1032; re-en. Sec. 9796, R.C.M. 1935; R.C.M. 1947, 93-8611; amd. Sec. 10, Ch. 466, L. 1979.

Cross-References

Jurisdiction of Municipal Courts, 3-6-103.
Jurisdiction of Justices' Courts, 3-10-301 through 3-10-303, 25-31-101.
Special proceedings defined, 27-1-102.
Certiorari, Title 27, ch. 25.

25-10-106. Several defendants not united in interest. When there are several defendants in the actions mentioned in 25-10-101, not united in interest and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor.

History: En. Sec. 474, p. 229, L. 1867; re-en. Sec. 550, p. 148, Cod. Stat. 1871; re-en. Sec. 486, p. 169, L. 1877; re-en. Sec. 486, 1st Div. Rev. Stat. 1879; re-en. Sec. 499, 1st Div. Comp. Stat. 1887; re-en. Sec. 1854, C. Civ. Proc. 1895; re-en. Sec. 7157, Rev. C. 1907; re-en. Sec. 9790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1026; re-en. Sec. 9790, R.C.M. 1935; R.C.M. 1947, 93-8605.

Cross-References

Multiple defendants jointly and severally liable, 27-1-703.

25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in the answer that before the commencement of the action the defendant tendered to the plaintiff the full amount to which the plaintiff was entitled and deposits in court for the plaintiff the amount tendered and the allegation is found to be true, the plaintiff cannot recover costs but shall pay costs to the defendant.

History: En. Sec. 409, p. 127, Bannack Stat.; amd. Sec. 478, p. 229, L. 1867; re-en. Sec. 554, p. 148, Cod. Stat. 1871; re-en. Sec. 491, p. 170, L. 1877; re-en. Sec. 491, 1st Div. Rev. Stat. 1879; re-en. Sec. 504, 1st Div. Comp. Stat. 1887; re-en. Sec. 1858, C. Civ. Proc. 1895; re-en. Sec. 7161, Rev. C. 1907; re-en. Sec. 9794, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1030; re-en. Sec. 9794, R.C.M. 1935; R.C.M. 1947, 93-8609; amd. Sec. 427, Ch. 56, L. 2009.

25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in the person's own right. However, the costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the costs to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense.

History: En. Sec. 410, p. 127, Bannack Stat.; re-en. Sec. 479, p. 230, L. 1867; re-en. Sec. 555, p. 148, Cod. Stat. 1871; re-en. Sec. 492, p. 170, L. 1877; re-en. Sec. 492, 1st Div. Rev. Stat. 1879; re-en. Sec. 505, 1st Div. Comp. Stat. 1887; re-en. Sec. 1859, C. Civ. Proc. 1895; re-en. Sec. 7162, Rev. C. 1907; re-en. Sec. 9795, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1031; re-en. Sec. 9795, R.C.M. 1935; R.C.M. 1947, 93-8610; amd. Sec. 428, Ch. 56, L. 2009.

Cross-References

Right to bring action or assert defenses, Title 27, ch. 1, part 5.
Powers, duties, and compensation of personal representatives, Title 72, ch. 3, part 6.

25-10-109. Prisoner attendance at civil proceeding prohibited — exceptions — costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding in which the person is a party unless:

(a) the person is a respondent in a proceeding to terminate parental rights; or

(b) the court determines that a party will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections attend a civil proceeding shall pay all costs associated with security.

History: En. Sec. 1, Ch. 475, L. 1997.

Part 2
Allowable Costs

25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in the party's bill of costs the party's necessary disbursements, as follows:

(1) the legal fees of witnesses, including mileage, or referees and other officers;

(2) the expenses of taking depositions;

(3) the legal fees for publication when publication is directed;

(4) the legal fees paid for filing and recording papers and certified copies of papers necessarily used in the action or on the trial;

(5) the legal fees paid stenographers for per diem or for copies;

(6) the reasonable expenses of printing papers for a hearing when required by a rule of court;

(7) the reasonable expenses of making transcript for the supreme court;

(8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and

(9) other reasonable and necessary expenses that are taxable according to the course and practice of the court or by express provision of law.

History: En. Sec. 1866, C. Civ. Proc. 1895; re-en. Sec. 7169, Rev. C. 1907; re-en. Sec. 9802, R.C.M. 1921; re-en. Sec. 9802, R.C.M. 1935; R.C.M. 1947, 93-8618; amd. Sec. 429, Ch. 56, L. 2009.

Cross-References

Salary and expenses of court reporters, 3-5-602.
Copies of proceedings, 3-5-604.
Cost of jury, 3-15-203, 3-15-205.
Fees of Clerk of District Court, 25-1-201.
Fee of court reporter, 25-1-202.
Alternative methods of service, Title 25, ch. 3, part 5.
Attorney fees, Title 25, ch. 10, part 3.
Witness fees, Title 26, ch. 2, part 5.
Trust for unlocatable mineral, leasehold, and royalty interest owners — penalty, 82-1-305.

25-10-202. Costs of motion. Whenever a motion is sustained or overruled, the losing party must pay to the other $10 as costs. If a motion is withdrawn before the hearing, it must be considered overruled.

History: En. Sec. 1861, C. Civ. Proc. 1895; re-en. Sec. 7164, Rev. C. 1907; re-en. Sec. 9797, R.C.M. 1921; re-en. Sec. 9797, R.C.M. 1935; R.C.M. 1947, 93-8612; amd. Sec. 99, Ch. 575, L. 1981.

25-10-203. Costs of postponement. When an application is made to the court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

History: En. Sec. 408, p. 127, Bannack Stat.; re-en. Sec. 477, p. 229, L. 1867; re-en. Sec. 553, p. 148, Cod. Stat. 1871; re-en. Sec. 490, p. 170, L. 1877; re-en. Sec. 490, 1st Div. Rev. Stat. 1879; re-en. Sec. 503, 1st Div. Comp. Stat. 1887; re-en. Sec. 1857, C. Civ. Proc. 1895; re-en. Sec. 7160, Rev. C. 1907; re-en. Sec. 9793, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1029; re-en. Sec. 9793, R.C.M. 1935; R.C.M. 1947, 93-8608.

Cross-References

Motion to postpone trial, Title 25, ch. 4, part 5.

25-10-204. Costs of transferring papers — change of venue. The costs and fees of transmitting the pleading and papers when an order is made transferring an action or proceeding for trial and of filing the papers anew must be paid by the party at whose instance the order was made; except that the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorneys' fees to be fixed by the court, incurred by the defendant by reason of the change of venue motion and hearing when:

(1) the action is an action upon a contract, express or implied, for the direct payment of money and no claim contained in the complaint exceeds $1,000;

(2) the county designated in the complaint is not the proper county; and

(3) the plaintiff will not within 10 days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

Fees of Clerk of District Court, 25-1-201.
Change of venue, Title 25, ch. 2, part 2.

25-10-205. Costs of securing witnesses — substitution of judge. Whenever a motion for substitution of a judge is filed after the action or proceeding is set for trial or hearing, the party filing the motion shall pay to the opposite party all costs necessarily incurred in securing the attendance of witnesses between the date the order was made fixing the day of hearing or trial and the time the motion was filed, and such costs so paid are not recoverable in the action or proceeding.

History: En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6511, Rev. C. 1907; re-en. Sec. 9103, R.C.M. 1921; re-en. Sec. 9103, R.C.M. 1935; R.C.M. 1947, 93-2911; amd. Sec. 100, Ch. 575, L. 1981.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

25-10-206. Secretary of state's fee for accepting service of process. The fee paid by the plaintiff to the secretary of state pursuant to part 6 of chapter 3 and Rule 4(p), M.R.Civ.P., must be taxed as part of the plaintiff's costs if the plaintiff prevails in the action.

History: En. Sec. 5, Ch. 10, L. 1937; amd. Sec. 11, Ch. 117, L. 1961; R.C.M. 1947, 53-205; amd. Sec. 131, Ch. 42, L. 1997.

Part 3
Attorney Fees

Part Cross-References

Attorney fees recoverable in action challenging validity and constitutionality of local government petition for initiative or referendum, 13-28-401.
Costs generally allowable, 25-10-201.
Claiming costs, Title 25, ch. 10, part 5.
Attorney fees in workers' compensation cases, 39-71-611 through 39-71-614.
Trust for unlocatable mineral, leasehold, and royalty interest owners — penalty, 82-1-305.

25-10-301. Determining compensation of attorneys. The measure and mode of compensation of attorneys and counselors at law is left to agreement, express or implied, of the parties, except that in probate proceedings the court may fix and allow the compensation of attorneys representing administrators, executors, guardians, trustees, and agents appointed by the court. But parties to actions or proceedings are entitled to costs and disbursements as provided by law.

History: En. Sec. 469, p. 228, L. 1867; re-en. Sec. 545, p. 147, Cod. Stat. 1871; re-en. Sec. 481, p. 168, L. 1877; re-en. Sec. 481, 1st Div. Rev. Stat. 1879; re-en. Sec. 494, 1st Div. Comp. Stat. 1887; amd. Sec. 1850, C. Civ. Proc. 1895; re-en. Sec. 7153, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1919; re-en. Sec. 9786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1021; re-en. Sec. 9786, R.C.M. 1935; R.C.M. 1947, 93-8601.

Cross-References

Costs generally allowable, 25-10-201.
Claiming costs, Title 25, ch. 10, part 5.
Allowance of attorney fees to unlicensed persons forbidden, 37-61-215.
Judgment lien for compensation, 37-61-420.
Settlement of fees in estates and probate proceedings, 72-3-634.

25-10-302. Inclusion of attorney's fees in bill of costs. The attorney fees mentioned in 25-10-303, 30-9A-607, 71-1-233, and 71-3-124 and paralegal fees as a component of attorney fees as provided in 25-10-304 need not be included in the cost bill if they are made a part of the judgment.

History: En. Sec. 1865, C. Civ. Proc. 1895; re-en. Sec. 7168, Rev. C. 1907; re-en. Sec. 9801, R.C.M. 1921; re-en. Sec. 9801, R.C.M. 1935; R.C.M. 1947, 93-8617; amd. Sec. 2, Ch. 528, L. 1981; amd. Sec. 128, Ch. 305, L. 1999; amd. Sec. 3, Ch. 443, L. 2009.

Cross-References

Judgment, Title 25, ch. 9.
Attorney's or litigant's liability for excess costs, 37-61-421.

25-10-303. Attorney fees — motor vehicle claim. In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the plaintiff in the plaintiff's last written offer to the defendant or the defendant's agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable attorney fees, which must be fixed by the court, notwithstanding any agreement between the parties to the contrary. If the defendant or the defendant's agent fails to make any offer within 15 days of the date requested to do so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, is entitled to reasonable attorney fees under this section.

History: En. Sec. 3, Ch. 528, L. 1981; amd. Sec. 430, Ch. 56, L. 2009.

Cross-References

When costs allowed on motor vehicle claim, 25-10-101.

25-10-304. Paralegal fees as component of attorney fees. In any case or proceeding in which attorney fees are awarded to the prevailing party, the court may, as a component of the attorney fees, include reasonable fees of a paralegal, as defined in 25-10-305.

History: En. Sec. 1, Ch. 443, L. 2009.

25-10-305. Paralegal defined — use of title. (1) As used in 25-10-304 and this section, "paralegal" means a person qualified through education, training, or work experience who is employed or retained to perform, under supervision by a licensed attorney, substantive legal work that:

(a) requires a substantial knowledge of legal concepts; and

(b) in the absence of the paralegal, would be performed by an attorney.

(2) An individual may use the title "paralegal" if the individual:

(a) has received an associate's degree in paralegal studies from an accredited institution or a baccalaureate degree in paralegal studies from an accredited college or university;

(b) has received a baccalaureate degree in any discipline from an accredited college or university and has completed not less than 18 semester credits of course work offered by a qualified paralegal studies program;

(c) has received certification by the national association of legal assistants or the national federation of paralegal associations;

(d) has received a high school diploma or its equivalent, has performed not less than 4,800 hours of substantive legal work under the supervision of a licensed attorney documented by the certification of the attorney or attorneys under whom the work was done, and has completed at least 5 hours of approved continuing legal education in the area of legal ethics and professional responsibility; or

(e) has graduated from an accredited law school and has not been disbarred or suspended from the practice of law by any jurisdiction.

(3) A person may not practice as a paralegal except under the supervision of a licensed attorney and is prohibited from engaging in the unauthorized practice of law.

History: En. Sec. 2, Ch. 443, L. 2009.

Part 4
Officers' Fees, Prepayment

25-10-401. Itemization of officer's fees. No fees of any officer shall be payable until an itemized account of the same, signed by the officer, shall be presented to the person liable therefor.

History: En. Sec. 11, p. 52, L. 1874; re-en. Sec. 815, 1st Div. Rev. Stat. 1879; re-en. Sec. 521, 1st Div. Comp. Stat. 1887; en. Sec. 1877, C. Civ. Proc. 1895; re-en. Sec. 7180, Rev. C. 1907; re-en. Sec. 9813, R.C.M. 1921; re-en. Sec. 9813, R.C.M. 1935; R.C.M. 1947, 93-8629.

Cross-References

Court reporters, Title 3, ch. 5, part 6.
Sheriff's Office, Title 7, ch. 32, part 21.
Fees of Clerk of District Court, 25-1-201.

25-10-402. No charge for copies furnished by party. In all cases in which copies of pleadings, affidavits, or other papers are to be served, the sheriff or clerk may not charge or receive a fee for making the copies when the copies are furnished to the sheriff or clerk by the party to the action or the party's attorney.

History: En. Sec. 1905, C. Civ. Proc. 1895; re-en. Sec. 7199, Rev. C. 1907; re-en. Sec. 9832, R.C.M. 1921; re-en. Sec. 9832, R.C.M. 1935; R.C.M. 1947, 93-8717; amd. Sec. 431, Ch. 56, L. 2009.

Cross-References

Service by officer, Title 25, ch. 3, part 2.
Service of telephonic or telegraphic copy, 25-3-501.
Lost papers, 25-4-111.

25-10-403. Prepayment of fees. Each party to a civil action is required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case mentioned in 25-10-405 and 25-10-701; and no such officer is required to perform such service or duty unless the fees fixed therefor are, on demand, first paid or tendered.

History: En. Sec. 565, p. 150, Cod. Stat. 1871; re-en. Sec. 505, p. 173, L. 1877; re-en. Sec. 505, 1st Div. Rev. Stat. 1879; re-en. Sec. 518, 1st Div. Comp. Stat. 1887; re-en. Sec. 1875, C. Civ. Proc. 1895; re-en. Sec. 7178, Rev. C. 1907; re-en. Sec. 9811, R.C.M. 1921; re-en. Sec. 9811, R.C.M. 1935; R.C.M. 1947, 93-8627.

Cross-References

Court reporters, Title 3, ch. 5, part 6.
Collection and disposal of fees, 7-4-2511.
Sheriff's Office, Title 7, ch. 32, part 21.
Fees of Clerk of District Court, 25-1-201.

25-10-404. Poor persons not required to prepay fees — definition. (1) Except as provided in subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense. Except as provided in subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance, except the fees under 25-1-201(1)(d) and (1)(r).

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings.

(5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any filing.

(6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of any fees required by law when funds exist. The court shall consider the indigence policy of the department when determining whether funds exist.

(7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by the court.

(8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, or a diversionary program and who is subject to incarceration, detention, or admission to any facility.

History: En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec. 1873, C. Civ., Proc. 1895; re-en. Sec. 7176, Rev. C. 1907; re-en. Sec. 9809, R.C.M. 1921; re-en. Sec. 9809, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1971; amd. Sec. 1, Ch. 90, L. 1973; R.C.M. 1947, 93-8625; amd. Sec. 1, Ch. 447, L. 1993; amd. Sec. 3, Ch. 475, L. 1997; amd. Sec. 3, Ch. 344, L. 2013.

25-10-405. Governmental entities not required to prepay fees — exceptions. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge, the fee under 25-1-201(1)(r) for filing a pleading by facsimile or e-mail, and all fees for photocopies, postage and handling, certifications, authentications, and record searches.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part); amd. Sec. 3, Ch. 318, L. 1987; amd. Sec. 1, Ch. 466, L. 1991; amd. Sec. 2, Ch. 570, L. 1993; amd. Sec. 4, Ch. 344, L. 2013.

Cross-References

Public officers not personally liable for costs, 25-10-701.
Advance payment for witnesses of state or county not required, 26-2-508.

25-10-406. Collection of clerk's and sheriff's costs after judgment. In all cases, after final judgment, the clerk or sheriff may make out a bill of costs against the party incurring them, and if not paid within 20 days after demand, execution may issue in the name of the parties to the action for the benefit of the clerk or sheriff.

History: En. Sec. 10, p. 51, L. 1874; re-en. Sec. 814, 1st Div. Rev. Stat. 1879; re-en. Sec. 520, 1st Div. Comp. Stat. 1887; en. Sec. 1876, C. Civ. Proc. 1895; re-en. Sec. 7179, Rev. C. 1907; re-en. Sec. 9812, R.C.M. 1921; re-en. Sec. 9812, R.C.M. 1935; R.C.M. 1947, 93-8628.

Cross-References

Sheriff's Office, Title 7, ch. 32, part 21.
Fees of Clerk of District Court, 25-1-201.
Prepayment of costs of service, 25-3-203.

Part 5
Claiming Costs

25-10-501. Bill of costs. The party in whose favor judgment is rendered and who claims the party's costs shall deliver to the clerk and serve upon the adverse party, within 5 days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision is stayed, then before the entry is made, a memorandum of the items of the party's costs and necessary disbursements in the action or proceeding. The memorandum must be verified by the oath of the party, the party's attorney or agent, or the clerk of the party's attorney, stating that to the best of the person's knowledge and belief, the items are correct and that the disbursements have been necessarily incurred in the action or proceeding.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part); amd. Sec. 432, Ch. 56, L. 2009.

25-10-502. Procedure upon objection to bill of costs. A party dissatisfied with the costs claimed may, within 5 days after notice of filing of the bill of costs, file and serve a notice of a motion to have the same taxed by the court in which the judgment was rendered or by the judge thereof at chambers.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part).

Cross-References

Powers of judges at chambers, 3-5-311.
Pleadings, motions, and other papers, Title 25, ch. 4.

25-10-503. How costs on appeal claimed. Whenever costs are awarded to a party by an appellate court, if the party claims the costs, the party shall, within 30 days after the remittitur is filed with the clerk in the original proceeding, deliver to the clerk a memorandum of the party's costs, verified as prescribed in 25-10-501, and then the party may have an execution for the costs as upon a judgment.

History: **En. Sec. 499, p. 172, L. 1877; re-en. Sec. 499, 1st Div. Rev. Stat. 1879; re-en. Sec. 512, 1st Div. Comp. Stat. 1887; re-en. Sec. 1869, C. Civ. Proc. 1895; re-en. Sec. 7172, Rev. C. 1907; re-en. Sec. 9805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1034; re-en. Sec. 9805, R.C.M. 1935; R.C.M. 1947, 93-8621; amd. Sec. 433, Ch. 56, L. 2009.**

Cross-References

When costs of appeal discretionary, 25-10-104.

Appeal to Supreme Court, Title 25, ch. 12.

25-10-504. Clerk to include costs in judgment. The clerk shall include in the judgment entered by the clerk the costs, if the costs have been taxed or ascertained. The clerk shall, within 2 days after the costs are taxed or ascertained, if not included in the judgment, insert the costs in a blank left in the judgment for that purpose and shall make a similar insertion of the costs in the copies and docket of the judgment.

History: **En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part); amd. Sec. 434, Ch. 56, L. 2009.**

Part 6
Security for Costs

25-10-601. Security for costs from nonresident plaintiff. When the plaintiff in an action resides out of this state or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding $300. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: **En. Sec. 414, p. 128, Bannack Stat.; amd. Sec. 483, p. 230, L. 1867; re-en. Sec. 559, p. 149, Cod. Stat. 1871; re-en. Sec. 501, p. 172, L. 1877; re-en. Sec. 501, 1st Div. Rev. Stat. 1879; re-en. Sec. 514, 1st Div. Comp. Stat. 1887; re-en. Sec. 1871, C. Civ. Proc. 1895; re-en. Sec. 7174, Rev. C. 1907; re-en. Sec. 9807, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1036; re-en. Sec. 9807, R.C.M. 1935; R.C.M. 1947, 93-8623.**

Cross-References

Extension of time, 25-1-301.

Deposit of money in lieu of undertaking, 25-1-401.

25-10-602. Dismissal when security not given. After the lapse of 30 days from the service of notice that security is required or of an order for new or additional security, upon proof thereof and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

History: **En. Sec. 485, p. 230, L. 1867; re-en. Sec. 561, p. 149, Cod. Stat. 1871; re-en. Sec. 502, p. 173, L. 1877; re-en. Sec. 502, 1st Div. Rev. Stat. 1879; re-en. Sec. 515, 1st Div. Comp. Stat. 1887; re-en. Sec. 1872, C. Civ. Proc. 1895; re-en. Sec. 7175, Rev. C. 1907; re-en. Sec. 9808, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1037; re-en. Sec. 9808, R.C.M. 1935; R.C.M. 1947, 93-8624.**

Cross-References

Judgment on merits, 25-9-101.

Part 7
Payment of Costs by Governmental Entities

Part Cross-References

Governmental liability exposure and insurance coverage, Title 2, ch. 9.

Governmental entities not required to give security, 25-1-402.

Governmental entities not required to prepay fees — exceptions, 25-10-405.

25-10-701. Public officers not to be personally taxed. No officer prosecuting or defending as provided in 25-10-405 shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state, county, or municipality, as the case may be.

History: **En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part).**

Cross-References

Immunization and indemnification of public employees, 2-9-305.
Mandamus — officers not to be personally liable, 27-26-403.

25-10-702. Payment of costs by state. When the state is a party and costs are awarded against it, they must be paid out of the state treasury.

History: En. Sec. 1878, C. Civ. Proc. 1895; re-en. Sec. 7181, Rev. C. 1907; re-en. Sec. 9814, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1038; re-en. Sec. 9814, R.C.M. 1935; R.C.M. 1947, 93-8630.

Cross-References

Payment of judgments against state, 2-9-315.
Governmental entities not required to prepay fees — exceptions, 25-10-405.

25-10-703. Payment of costs by county. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

History: En. Sec. 1879, C. Civ. Proc. 1895; re-en. Sec. 7182, Rev. C. 1907; re-en. Sec. 9815, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1039; re-en. Sec. 9815, R.C.M. 1935; R.C.M. 1947, 93-8631.

Cross-References

Payment of judgments against governmental entities, except state, 2-9-316.
Judgments against county or county officer, 25-13-205.

25-10-704 through 25-10-710 reserved.

25-10-711. Award of costs against government entity when suit or defense is frivolous or pursued in bad faith — legislative branch conduct not considered — award of costs related to legislative veto override poll. (1) Except as provided in subsection (2), in any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney fees as determined by the court if:

(a) the opposing party prevails against the state, political subdivision, or agency; and

(b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) The conduct of the legislative branch in passing legislation may not be considered in a bad faith analysis. This subsection applies to any award of costs or attorney fees against a government entity regardless of whether the defense is frivolous or pursued in bad faith.

(3) In an action in which a party seeks a writ of mandamus to compel a legislative veto override poll and the result of the poll does not override the veto, the opposing party is not considered to have prevailed. This subsection applies to an award of costs against a government entity even if a court finds that the defense was frivolous or pursued in bad faith.

(4) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary. The award of costs must be reasonable and considered under 25-10-712.

History: En. Sec. 1, Ch. 402, L. 1979; amd. Sec. 435, Ch. 56, L. 2009; amd. Sec. 1, Ch. 352, L. 2025; amd. Sec. 1, Ch. 450, L. 2025; amd. Sec. 2, Ch. 542, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 352, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 450, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 542, L. 2025. Amendment effective October 1, 2025.

Applicability — Retroactive Applicability: Section 3, Ch. 352, L. 2025, provided: "[This act] applies to actions relating to a legislative veto override poll commenced on or after [the effective date of this act]." Effective May 5, 2025.

Section 5, Ch. 450, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all legislation passed and approved on or after commencement of the 69th legislative session."

Section 4, Ch. 542, L. 2025, provided: "[This act] applies to awards of attorney fees in civil lawsuits that are pending on or after [the effective date of this act]." Effective October 1, 2025.

Cross-References

Government entities not required to give security, 25-1-402.
Judgments against county or county officer, 25-13-205.
Garnishment of public officers, 25-13-504.
Governmental property exempt from execution, 25-13-613.
Legislative conduct inadmissible, 26-1-109.

25-10-712. Requirements for attorney fee award request — awards against state. (1) An award of attorney fees must be reasonable. A reasonable claim for attorney fees must include the following:

(a) the date a task is performed and the name of the timekeeper;

(b) a specific description of the task, including but not limited to the nature, purpose, or subject of the work performed. Generic descriptors for a task and the work claimed are unreasonable. The description of the task performed must be sufficient for a reasonable person to understand what work is being claimed.

(c) time that is billed in increments of tenths of an hour, including:

(i) a statement indicating whether the attorney has or has had a client who pays the hourly rate requested by the attorney; and

(ii) a detailed list of time spent on each task. Block billing or aggregating of tasks may not be claimed.

(d) a specific description of the work performed;

(e) an itemized list of expenses, including receipts from vendors;

(f) in-house copying expenses that may not exceed 10 cents a page; and

(g) an indication of whether a portion of the attorney fee has been paid and whether the client is responsible for paying a portion of the bill if the attorney does not collect the award.

(2) There is a rebuttable presumption that the following are unreasonable requests for attorney fees:

(a) sending more than one attorney to a deposition;

(b) sending more than two attorneys to an oral argument or trial;

(c) charging for the cost of telephone calls, faxes, library facilities, or electronic research subscriptions; and

(d) charging an hourly rate greater than the statewide average if the attorney has not been practicing for more than 10 years.

(3) In addition to the requirements imposed by subsections (1) and (2), when considering an award of attorney fees against the state, the court shall take into consideration the hourly rate charged by the attorney representing the state. If the court elects to grant a rate higher than the rate charged by the attorney representing the state, the court shall provide an explanation as to why the rate charged by the state does not adequately compensate the attorney for which attorney fees are requested.

(4) In determining the reasonableness of an award of attorney fees, a court may consider factors other than those contained in this section.

(5) The provisions of this section do not apply to claims for attorney fees for an amount less than $10,000.

History: En. Sec. 1, Ch. 542, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Applicability: Section 4, Ch. 542, L. 2025, provided: "[This act] applies to awards of attorney fees in civil lawsuits that are pending on or after [the effective date of this act]." Effective October 1, 2025.

CHAPTER 11
NEW TRIAL

Part 1 — General Provisions

25-11-101. New trial defined.
25-11-102. Grounds for new trial.
25-11-103. Grounds after trial by the court.
25-11-104. How motion for new trial made.

Chapter Cross-References

Procedure when juror becomes sick, 25-7-304.
Procedure when jury prevented from giving verdict, 25-7-305.
When costs of appeal discretionary, 25-10-104.
Motion for new trial — criminal procedure, Title 46, ch. 16, part 7.

Part 1
General Provisions

25-11-101. New trial defined. A new trial is a reexamination of an issue of fact in the same court after a trial and decision by a jury or court or by referees.

History: En. Sec. 168, p. 76, Bannack Stat.; en. Sec. 192, p. 171, L. 1867; re-en. Sec. 232, p. 74, Cod. Stat. 1871; re-en. Sec. 284, p. 111, L. 1877; re-en. Sec. 284, 1st Div. Rev. Stat. 1879; re-en. Sec. 295, 1st Div. Comp. Stat. 1887; re-en. Sec. 1170, C. Civ. Proc. 1895; re-en. Sec. 6793, Rev. C. 1907; re-en. Sec. 9395, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 656; re-en. Sec. 9395, R.C.M. 1935; R.C.M. 1947, 93-5601.

25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of the party:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, the misconduct may be proved by the affidavit of any one of the jurors.

(3) accident or surprise that ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application that the party could not, with reasonable diligence, have discovered and produced at the trial;

(5) excessive damages appearing to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application.

History: En. Sec. 169, p. 76, Bannack Stat.; amd. Sec. 193, p. 171, L. 1867; re-en. Sec. 233, p. 74, Cod. Stat. 1871; amd. Sec. 285, p. 111, L. 1877; re-en. Sec. 285, 1st Div. Rev. Stat. 1879; amd. Sec. 7, p. 10, L. 1881; re-en. Sec. 296, 1st Div. Comp. Stat. 1887; re-en. Sec. 1171, C. Civ. Proc. 1895; re-en. Sec. 6794, Rev. C. 1907; re-en. Sec. 9397, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 657; amd. Sec. 1, Ch. 68, L. 1935; re-en. Sec. 9397, R.C.M. 1935; R.C.M. 1947, 93-5603; amd. Sec. 101, Ch. 575, L. 1981; amd. Sec. 436, Ch. 56, L. 2009.

Cross-References

Power of Supreme Court to order new trial, 3-2-204.

25-11-103. Grounds after trial by the court. No new trial may be granted in cases tried by the court without a jury, except on the grounds mentioned in subsections (1), (3), and (4) of 25-11-102.

History: En. Sec. 5, Ch. 225, L. 1921; re-en. Sec. 9396, R.C.M. 1921; re-en. Sec. 9396, R.C.M. 1935; R.C.M. 1947, 93-5602; amd. Sec. 102, Ch. 575, L. 1981.

Cross-References

Issues of law to be decided by court, 25-7-102.
Province of court and jury, Title 26, ch. 1, part 2.

25-11-104. How motion for new trial made. (1) Motions for new trials shall be made as follows:

(a) For causes mentioned in 25-11-102(1), the motion shall be made on affidavits or on the minutes of the court.

(b) For causes mentioned in subsection (2), (3), or (4) of 25-11-102, the motion shall be made only on affidavits.

(c) For causes mentioned in subsection (5), (6), or (7) of 25-11-102, the motion shall be made only on the minutes of the court.

(2) The official stenographic reports of the trial may be referred to as a part of the minutes of the court.

History: En. Sec. 170, p. 77, Bannack Stat.; re-en. Sec. 234, p. 75, Cod. Stat. 1871; amd. Sec. 286, p. 112, L. 1877; re-en. Sec. 286, 1st Div. Rev. Stat. 1879; re-en. Sec. 297, 1st Div. Comp. Stat. 1887; re-en. Sec. 1172, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 41, L. 1907; Sec. 6795, Rev. C. 1907; amd. Sec. 6, Ch. 225, L. 1921; re-en. Sec. 9398, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 658; amd. Sec. 2, Ch. 68, L. 1935; re-en. Sec. 9398, R.C.M. 1935; R.C.M. 1947, 93-5604; amd. Sec. 103, Ch. 575, L. 1981.

CHAPTER 12
APPEAL TO SUPREME COURT

Part 1 — General Provisions

25-12-101. Exclusive method of review.
25-12-102. Cases in which appeal may be taken.
25-12-103. Appeal bonds in civil actions.

Chapter Cross-References

When costs of appeal discretionary, 25-10-104.
How costs on appeal claimed, 25-10-503.

Part 1
General Provisions

25-12-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed by the Rules of Appellate Procedure and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8001(part).

25-12-102. Cases in which appeal may be taken. A party aggrieved may appeal in the cases prescribed in the Rules of Appellate Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8002(part).

25-12-103. Appeal bonds in civil actions. (1) Except as provided in subsection (2), in order to ensure that financial considerations do not adversely impact the right of appeal, in civil litigation under any legal theory, the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review, including review by the United States supreme court, may not exceed $50 million, regardless of the amount of the judgment.

(2) If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets or is likely to dissipate assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment.

History: En. Sec. 1, Ch. 154, L. 2013.

CHAPTER 13
EXECUTION OF JUDGMENT

Part 1 — Right to Enforcement of Judgment

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Proceedings in aid of Execution, Title 25, ch. 14.
Statute of limitations on action against Sheriff for nonpayment of money collected by execution, 27-2-209.
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Part 1
Right to Enforcement of Judgment

Part Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

25-13-101. Time limit for issuing execution. (1) The party in whose favor the judgment is given may, at any time within the time period prescribed in 27-2-201(1) and (2), have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement.

History: En. Sec. 183, p. 79, Bannack Stat.; re-en. Sec. 209, p. 176, L. 1867; re-en. Sec. 250, p. 80, Cod. Stat. 1871; amd. Sec. 301, p. 118, L. 1877; re-en. Sec. 301, 1st Div. Rev. Stat. 1879; re-en. Sec. 312, 1st Div. Comp. Stat. 1887; amd. Sec. 1210, C. Civ. Proc. 1895; re-en. Sec. 6813, Rev. C. 1907; re-en. Sec. 9416, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 681; re-en. Sec. 9416, R.C.M. 1935; R.C.M. 1947, 93-5801; amd. Sec. 4, Ch. 631, L. 1993; amd. Sec. 4, Ch. 60, L. 1995; amd. Sec. 7, Ch. 515, L. 2001.

Cross-References

Enforcement of support, Title 40, ch. 5.

25-13-102. Repealed. Sec. 18, Ch. 515, L. 2001.

History: En. Sec. 7, p. 51, L. 1874; re-en. Sec. 813, 1st Div. Rev. Stat. 1879; re-en. Sec. 349, 1st Div. Comp. Stat. 1887; en. Sec. 1215, C. Civ. Proc. 1895; re-en. Sec. 6818, Rev. C. 1907; re-en. Sec. 9421, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 685; re-en. Sec. 9421, R.C.M. 1935; R.C.M. 1947, 93-5807.

25-13-103. Execution after death of party. Notwithstanding the death of a party after the judgment, execution on the judgment may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, it may be enforced upon the application of the creditor's executor, administrator, or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment is for the recovery of real or personal property or the enforcement of a lien on the property, execution may be issued with the same effect as if the debtor were still living.

History: En. Sec. 215, p. 178, L. 1867; re-en. Sec. 256, p. 82, Cod. Stat. 1871; re-en. Sec. 306, p. 120, L. 1877; re-en. Sec. 306, 1st Div. Rev. Stat. 1879; re-en. Sec. 317, 1st Div. Comp. Stat. 1887; re-en. Sec. 1216, C. Civ. Proc. 1895; re-en. Sec. 6819, Rev. C. 1907; re-en. Sec. 9422, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 686; re-en. Sec. 9422, R.C.M. 1935; R.C.M. 1947, 93-5808; amd. Sec. 437, Ch. 56, L. 2009.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-13-104. Compelling contribution or repayment — joint debtor — surety. (1) When property liable to an execution against several persons is sold upon execution and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than the person's proportion, the person may compel contribution from the others. When a judgment is against several persons and is upon an obligation of one of them as surety for another and the surety pays the amount or any part of the amount, either by sale of the surety's property or before sale, the surety may compel repayment from the principal.

(2) In the case described in subsection (1), the person paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10 days after the person's payment, the person files with the clerk of the court where judgment was rendered notice of payment and a claim to contribution or repayment. Upon the filing of the notice, the clerk shall make an entry of the notice in the margin of the docket.

History: En. Sec. 337, p. 132, L. 1877; re-en. Sec. 337, 1st Div. Rev. Stat. 1879; re-en. Sec. 348, 1st Div. Comp. Stat. 1887; re-en. Sec. 1242, C. Civ. Proc. 1895; re-en. Sec. 6845, Rev. C. 1907; re-en. Sec. 9451, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 709; re-en. Sec. 9451, R.C.M. 1935; R.C.M. 1947, 93-5843; amd. Sec. 104, Ch. 575, L. 1981; amd. Sec. 438, Ch. 56, L. 2009.

Cross-References
Joint debtor's right of contribution — discharge, 25-15-202.
Multiple defendants' liability — right of contribution, 27-1-703.
Right to contribution from joint debtors, 28-1-303.
Surety's right to reimbursement and contribution, 28-11-417.

25-13-105. Compelling repayment — surety on appeal. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, the surety is substituted to the rights of the judgment creditor and is entitled to control, enforce, and satisfy the judgment in all respects as if the surety had recovered the judgment.

History: En. Sec. 1903, C. Civ. Proc. 1895; re-en. Sec. 7197, Rev. C. 1907; re-en. Sec. 9830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1059; re-en. Sec. 9830, R.C.M. 1935; R.C.M. 1947, 93-8715; amd. Sec. 439, Ch. 56, L. 2009.

Cross-References
Undertaking for security, Title 25, ch. 1, part 4.
Suretyship, Title 28, ch. 11, part 4.

Part 2
Method of Enforcement

Part Cross-References
Enforcement of court's order, 25-8-102.

25-13-201. Judgments for money or possession of property. When the judgment is for money or the possession of real or personal property, the judgment may be enforced by a writ of execution. If the judgment directs that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against the judgment debtor's property unsatisfied in whole or in part.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part); amd. Sec. 440, Ch. 56, L. 2009.

Cross-References
Execution against person of judgment debtor, 25-13-308.
Arrest and bail in civil actions, Title 27, ch. 16.

25-13-202. Judgments requiring the sale of property. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment or the material parts thereof and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part).

25-13-203. Judgments requiring the performance of specific acts. (1) When the judgment requires the performance of any other act than those designated in 25-13-201 and 25-13-202, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: **(1)En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; Sec. 93-5805, R.C.M. 1947; (2)En. Sec. 229, P. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; Sec. 93-4504, R.C.M. 1947; R.C.M. 1947, 93-4504(part), 93-5805(part); amd. Sec. 17, Ch. 548, L. 1987.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-204. Enforcement of order to pay money. Whenever an order for the payment of a sum of money is made by a court or judge pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

History: **En. Sec. 473, p. 166, L. 1877; re-en. Sec. 473, 1st Div. Rev. Stat. 1879; re-en. Sec. 486, 1st Div. Comp. Stat. 1887; re-en. Sec. 1825, C. Civ. Proc. 1895; re-en. Sec. 7144, Rev. C. 1907; re-en. Sec. 9777, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1007; re-en. Sec. 9777, R.C.M. 1935; R.C.M. 1947, 93-5806.**

Cross-References

Uniform Foreign Money-Judgments Recognition Act, Title 25, ch. 9, part 6.
Enforcement of judgment or order to pay child support, 40-6-117.

25-13-205. Judgments against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against the officer in the officer's name of office, when the judgment is to be paid by the county, execution may not issue upon the judgment, but the judgment must be paid in the same manner as other county charges. When collected, the judgment must be paid by the county treasurer to the proper person to whom the judgment is issued, upon the delivery of a proper voucher for payment.

History: **En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811; amd. Sec. 441, Ch. 56, L. 2009.**

Cross-References

Payment of judgments against governmental entities, 2-9-316.
Garnishment of public officers, 25-13-504.
Governmental property exempt from execution, 25-13-613.
Collection of judgment against county or county officer, 25-31-1111.

25-13-206 through 25-13-210 reserved.

25-13-211. Notification of seizure. (1) After the sheriff or levying officer has executed upon the property of a judgment debtor, a notice of seizure must be served by the sheriff or levying officer upon the judgment debtor within 5 days of seizure. The notification must:

(a) inform the judgment debtor that certain described property or money of the judgment debtor's was seized to satisfy a judgment against the debtor;

(b) state the case name, the date of judgment, and the name of the judgment creditor;

(c) advise the judgment debtor that the judgment debtor may be entitled to claim an exemption from execution on the property as described in part 6 of this chapter or other provisions of state or federal law; and

(d) state the procedure by which the judgment debtor may claim an exemption and file a request for an exemption hearing.

(2) The notification may be made by personal service or by United States mail, postage prepaid, to the judgment debtor's last-known address. If service is by mail, service is completed on the date the sheriff or levying officer places the notification in the mail.

History: **En. Sec. 1, Ch. 89, L. 1999.**

25-13-212. Claiming exemption — process — time for hearing. (1) To claim an exemption from execution, a judgment debtor shall file a written request for a hearing with the court that issued the execution accompanied by a written statement that describes the property that the judgment debtor claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any documentation upon which the judgment debtor is relying for the exemption claim. A copy of the request, statement, and any documentation must be mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request, statement, and any documentation must be filed within 10 days, excluding weekends and holidays, of the date of:

(a) the judgment debtor's receipt of notification of execution if notification was by personal service; or

(b) the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).

(2) If the judgment debtor does not file the request, statement, and any documentation claiming an exemption within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing, along with the statement and any documentation, shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer.

History: En. Sec. 2, Ch. 89, L. 1999; amd. Sec. 2, Ch. 457, L. 2007.

25-13-213. Warrant of execution — requirements — penalties. (1) If there is reason to believe that there is personal property subject to execution that is located in the judgment debtor's residence, the judgment creditor or the judgment creditor's attorney may file an application for a warrant of execution with the court.

(2) The application must be supported by an affidavit from the judgment creditor or the judgment creditor's attorney:

(a) stating that a writ of execution has been issued and returned unsatisfied in whole or in part;

(b) stating that the affiant has reason to believe that there is property subject to execution in the possession of the judgment debtor in the judgment debtor's residence;

(c) stating that there is no other property of the judgment debtor available for levy and execution; and

(d) describing the property sought and the place and the purpose of the execution.

(3) If the judge determines that reasonable cause exists, the judge may issue a warrant of execution authorizing the sheriff or levying officer to enter the residence and levy upon property subject to execution.

(4) A sheriff or levying officer may condition service of a writ of execution and levy on property located in an area other than the judgment debtor's residence upon the judgment creditor's securing a warrant of execution in accordance with subsection (1) when the sheriff or levying officer believes the area is subject to a reasonable expectation of privacy.

History: En. Sec. 3, Ch. 89, L. 1999.

Part 3
Contents of Writ

25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount of money and the amount actually due on the judgment; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount of the execution must be computed and stated as near as may be possible in dollars and cents, rejecting fractions of a cent.

(3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in 25-13-614.

(4) A notice of levy must contain information sufficient to identify the judgment debtor. If the information is not sufficient to identify the judgment debtor, the writ of execution must be returned to the sheriff or levying officer. If the writ of execution is returned to the sheriff or levying officer for lack of sufficient information, the person returning the writ of execution shall indicate that the information provided was not sufficient to identify the judgment debtor.

History: (1)En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M.

1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; Sec. 93-5802, R.C.M. 1947; (2)En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; Sec. 93-4710, R.C.M. 1947; R.C.M. 1947, 93-4710(part), 93-5802(part); amd. Sec. 105, Ch. 575, L. 1981; amd. Sec. 18, Ch. 548, L. 1987; amd. Sec. 4, Ch. 89, L. 1999; amd. Sec. 8, Ch. 515, L. 2001.

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.
Money of account, Title 30, ch. 12, part 6.

25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it is shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the defendants are sureties of the principal debtor, the court may order the judgment to state that fact. Upon the issuance of an execution upon the judgment, the execution must direct the sheriff or levying officer to make the amount due on the judgment out of the goods and chattels, lands, and tenements of the principal debtor or debtors or, if sufficient amount cannot be found within the principal judgment debtor's county to satisfy the judgment, to levy and make the execution out of the property, personal or real, of the judgment debtor who was surety.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 19, Ch. 548, L. 1987; amd. Sec. 442, Ch. 56, L. 2009.

Cross-References

Designation in judgment of principal debtors and sureties, 25-9-202.
Suretyship, Title 28, ch. 11, part 4.

25-13-303. Execution when only some of defendants served. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

History: En. Sec. 185, p. 80, Bannack Stat.; amd. Sec. 211, p. 177, L. 1867; re-en. Sec. 252, p. 81, Cod. Stat. 1871; re-en. Sec. 303, p. 119, L. 1877; re-en. Sec. 303, 1st Div. Rev. Stat. 1879; re-en. Sec. 314, 1st Div. Comp. Stat. 1887; re-en. Sec. 1212, C. Civ. Proc. 1895; re-en. Sec. 6815, Rev. C. 1907; re-en. Sec. 9418, R.C.M. 1921; re-en. Sec. 9418, R.C.M. 1935; R.C.M. 1947, 93-5803; amd. Sec. 20, Ch. 548, L. 1987.

Cross-References

Summoning joint debtor not originally served, 25-15-101.
Multiple defendants jointly and severally liable, 27-1-703.

25-13-304. Execution against property of judgment debtor. If the writ is against the property of the judgment debtor, the writ must require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of the debtor and, if sufficient personal property cannot be found, out of the debtor's real property as provided in 25-13-305.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 106, Ch. 575, L. 1981; amd. Sec. 21, Ch. 548, L. 1987; amd. Sec. 443, Ch. 56, L. 2009.

Cross-References

Clerk to include interest in judgment, 25-9-204.
Amount of interest, 25-9-205.
Procedure when debtor withholding property from execution — arrest, 25-14-102.

25-13-305. Execution of lien on real property. If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 22, Ch. 548, L. 1987.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Docketing of judgment — lien, 25-9-301.

Judgment lien, 71-3-1504.

25-13-306. Execution against property in hands of representative. If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(2); amd. Sec. 23, Ch. 548, L. 1987.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Powers and duties of personal representative, Title 72, ch. 3, part 6.

25-13-307. Execution requiring delivery of possession of property. If the writ be for the delivery of the possession of real or personal property, it must require the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in 25-13-305.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(4); amd. Sec. 24, Ch. 548, L. 1987.

Cross-References

Judgments for money or possession of property, 25-13-201.

25-13-308. Execution against person of judgment debtor. If the writ is against the person of the judgment debtor, it must require the sheriff to arrest the debtor and commit the debtor to the jail of the county until the debtor pays the judgment, with interest, or is discharged, according to law.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(3); amd. Sec. 444, Ch. 56, L. 2009.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Judgments for money or possession of property, 25-13-201.

Procedure when debtor withholding property from execution — arrest, 25-14-102.

Effect of discharge, 25-14-309.

Discharge at instance of plaintiff, 25-14-311.

Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.

Arrest and bail in civil actions, Title 27, ch. 16.

Part 4
Execution and Return of Writ

Part Cross-References

Proceedings in aid of execution, Title 25, ch. 14.

25-13-401. To whom execution issued. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

History: En. Sec. 216, p. 178, L. 1867; re-en. Sec. 257, p. 82, Cod. Stat. 1871; re-en. Sec. 307, p. 120, L. 1877; re-en. Sec. 307, 1st Div. Rev. Stat. 1879; re-en. Sec. 318, 1st Div. Comp. Stat. 1887; re-en. Sec. 1217, C. Civ. Proc. 1895; re-en. Sec. 6820, Rev. C. 1907; re-en. Sec. 9423, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 687; re-en. Sec. 9423, R.C.M. 1935; R.C.M. 1947, 93-5809; amd. Sec. 25, Ch. 548, L. 1987.

25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsections (6) and (7), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the third party or upon a department or person designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (8), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) (a) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first.

(b) Upon written consent of the department of revenue, service of the writ on the department may be accomplished by electronic means.

(c) The levy applies to any funds due on or after the date of service through the expiration of the writ.

(d) Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes or other debt as provided in 15-30-2609, 15-30-2629, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

(8) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions.

History: En. Sec. 198, p. 83, Bannack Stat.; re-en. Sec. 220, p. 180, L. 1867; re-en. Sec. 270, p. 85, Cod. Stat. 1871; amd. Sec. 320, p. 125, L. 1877; re-en. Sec. 320, 1st Div. Rev. Stat. 1879; re-en. Sec. 331, 1st Div. Comp. Stat. 1887; re-en. Sec. 1224, C. Civ. Proc. 1895; re-en. Sec. 6827, Rev. C. 1907; re-en. Sec. 9431, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 691; re-en. Sec. 9431, R.C.M. 1935; R.C.M. 1947, 93-5823; amd. Sec. 3, Ch. 88, L. 1987; amd. Sec. 26, Ch. 548, L. 1987; amd. Sec. 5, Ch. 89, L. 1999; amd. Sec. 9, Ch. 515, L. 2001; amd. Sec. 1, Ch. 560, L. 2001; amd. Sec. 68, Ch. 114, L. 2003; amd. Sec. 4, Ch. 510, L. 2003; amd. Sec. 5, Ch. 392, L. 2005; amd. Sec. 3, Ch. 457, L. 2007; amd. Sec. 2, Ch. 200, L. 2013.

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.
Conduct of sale, 25-13-704.

25-13-403. Security for costs when property seized. If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part); amd. Sec. 27, Ch. 548, L. 1987.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.
Order to apply property to satisfaction of judgment, 25-14-107.

25-13-404. Return of the execution. (1) Except as provided in 25-13-402(6) and subsection (3) of this section, execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 120 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 120 days after its receipt by the sheriff, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose the return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 107, Ch. 575, L. 1981; amd. Sec. 1, Ch. 91, L. 1983; amd. Sec. 4, Ch. 88, L. 1987; amd. Sec. 28, Ch. 548, L. 1987; amd. Sec. 2, Ch. 560, L. 2001.

Cross-References

Debtor to answer concerning debtor's property when execution unsatisfied, 25-14-101.
Procedure when debtor withholding property from execution — arrest, 25-14-102.

25-13-405. Clerk to record returned execution when levy on real property. If any real estate is levied upon, the clerk shall record the execution and the return of the execution at large and certify the execution and return as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part of the originals may be destroyed or mutilated.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 445, Ch. 56, L. 2009.

Cross-References

Debtor to answer concerning debtor's property when execution unsatisfied, 25-14-101.

25-13-406 through 25-13-410 reserved.

25-13-411. Repealed. Sec. 3, Ch. 301, L. 1989.

History: En. Sec. 2, Ch. 538, L. 1985.

Part 5
Property Subject to Execution

Part Cross-References

What property subject to attachment, 27-18-102.
Execution against trespassing animals, 81-4-307.
Sale of unlawfully driven animals in manner as execution, 81-5-110.
Sale of livestock under supplementary writ of execution, 81-8-315.

25-13-501. What property subject to execution. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

History: En. Sec. 192, p. 81, Bannack Stat.; amd. Sec. 217, p. 178, L. 1867; re-en. Sec. 258, p. 82, Cod. Stat. 1871; re-en. Sec. 308, p. 121, L. 1877; re-en. Sec. 308, 1st Div. Rev. Stat. 1879; re-en. Sec. 319, 1st Div. Comp. Stat. 1887; re-en. Sec. 1218, C. Civ. Proc. 1895; re-en. Sec. 6821, Rev. C. 1907; re-en. Sec. 9424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 688; re-en. Sec. 9424, R.C.M. 1935; R.C.M. 1947, 93-5810.

Cross-References

Return of damaged property to officer for sale, 27-17-404.
What property subject to attachment, 27-18-102.

25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, a person indebted to the judgment debtor may pay to the sheriff the amount of the person's debt or as much of the debt as is necessary to satisfy the execution. The sheriff's receipt is sufficient discharge for the amount paid.

History: En. Sec. 217, p. 88, Bannack Stat.; re-en. Sec. 240, p. 184, L. 1867; re-en. Sec. 289, Cod. Stat. 1871; re-en. Sec. 340, p. 134, L. 1877; re-en. Sec. 340, 1st Div. Rev. Stat. 1879; re-en. Sec. 352, 1st Div. Comp. Stat. 1887; re-en. Sec. 1262, C. Civ. Proc. 1895; re-en. Sec. 6850, Rev. C. 1907; re-en. Sec. 9456, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 716; re-en. Sec. 9456, R.C.M. 1935; R.C.M. 1947, 93-5903; amd. Sec. 446, Ch. 56, L. 2009.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.
Order to apply property to satisfaction of judgment, 25-14-107.

25-13-503. Property claimed by third persons. If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in 27-18-602.

History: En. Sec. 1220, C. Civ. Proc. 1895; re-en. Sec. 6823, Rev. C. 1907; re-en. Sec. 9426, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 689; re-en. Sec. 9426, R.C.M. 1935; R.C.M. 1947, 93-5812.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.
Procedure when debt to or ownership of judgment debtor denied, 25-14-104.
Order to apply property to satisfaction of judgment, 25-14-107.

25-13-504. Garnishment of public officers. The provisions of 27-18-406, relating to the garnishment of public officers, apply to the levy of an execution.

History: **En. Sec. 1243, C. Civ. Proc. 1895; re-en. Sec. 6846, Rev. C. 1907; re-en. Sec. 9452, R.C.M. 1921; re-en. Sec. 9452, R.C.M. 1935; R.C.M. 1947, 93-5844.**

Cross-References

Money, credits, or other property in control of public officer or board, 27-18-406.

25-13-505. Personal property subject to a security interest. Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party.

History: **En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).**

Cross-References

Property subject to security interest — disposition of proceeds — security agreement, 25-13-712.
Uniform Commercial Code — secured transactions, Title 30, ch. 9A.

25-13-506. Duty of secured party. (1) The secured party under any security agreement of record is required, upon 15 days' notice in writing served upon the party in person by any creditor of the debtor seeking to satisfy a judgment of the creditor against the debtor, to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party. The affidavit must state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments, whether on principal or interest, made by the debtor to the date of the execution of the affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any demand in writing on the secured party by any creditor of the debtor the secured party fails, refuses, or neglects to file the affidavit, the security agreement is of no effect as against the creditor upon the seizure of any personal property on execution.

(2) If the amount shown to be due is paid to the county treasurer, to a filing officer, or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party is required to surrender to the county treasurer or the filing officer the security agreement and any note or other evidence of indebtedness secured by the agreement, note, or other evidence of indebtedness. The security agreement or other evidence of indebtedness must be delivered by the secured party, county treasurer, or filing officer to the execution creditor.

History: **En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part); amd. Sec. 447, Ch. 56, L. 2009.**

Cross-References

Property subject to security interest — disposition of proceeds — security agreement, 25-13-712.
Uniform Commercial Code — secured transactions, Title 30, ch. 9A.

Part 6
Property Exempt From Execution

Part Cross-References

Government property exempt from execution, 2-9-318.
PERS benefits exempt from execution, 19-2-1004.
Firefighters' retirement benefits exempt from execution, 19-18-612.
Police retirement benefits exempt from execution, 19-19-504.
Teachers' retirement benefits exempt from execution, 19-20-706.
University System retirement program benefits exempt from execution, 19-21-212.
Exempt property — bankruptcy proceedings, 31-2-106.
Exempt property not passed by general assignment, 31-2-227.
Cooperative share exempt from execution, 35-15-404.
Nonliability of members of rural cooperative utilities for debts of cooperative, 35-18-302.

Cemetery association property exempt from execution, 35-20-217.
Unemployment insurance benefits exempt from execution, 39-51-3105.
Workers' compensation benefits not liable for debts, 39-71-743.
Silicosis benefits not assignable or subject to legal process, 39-73-110.
Hail insurance benefits exempt from execution, 80-2-245.

25-13-601. Waiver of exemptions in unsecured note unenforceable. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965; R.C.M. 1947, 93-5813.1.

Cross-References

Uniform Commercial Code — negotiable instruments, Title 30, ch. 3.

25-13-602. Repealed. Sec. 6, Ch. 210, L. 1985.

History: En. Sec. 1, Ch. 120, L. 1933; re-en. Sec. 9430.1, R.C.M. 1935; R.C.M. 1947, 93-5819.

25-13-603. Medical care, health, or medical savings account — bankruptcy — exemption from attachment or garnishment. (1) An individual's medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220:

(a) is exempt from creditor processes;

(b) is not liable to attachment, garnishment, or similar legal processes; and

(c) may not be seized, taken, appropriated, or applied by a legal or equitable process or by operation of law to pay a debt or liability of the individual or of a beneficiary on the account as provided in 72-6-223. This includes but is not limited to exemption from judgments under Title 25, chapter 13, and bankruptcy proceedings as provided under 31-2-106.

(2) This section applies to an individual's rights to hold or receive the assets of, income from, or funds paid into or out of a medical care savings account, health savings account, or medical savings account.

(3) This section does not apply to the extent that the bankruptcy, creditor, and other processes in subsection (1) relate to recovery of eligible medical expenses incurred by an individual from the individual's medical care savings account, health savings account, or medical savings account.

History: En. Sec. 1, Ch. 298, L. 2017.

25-13-604 and 25-13-605 reserved.

25-13-606. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

History: En. Sec. 1, Ch. 302, L. 1987.

25-13-607. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

(1) the purchase price of the property; or

(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

History: En. Sec. 2, Ch. 302, L. 1987.

25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and rollover contributions, as defined in 26 U.S.C. 408(d)(3);

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;
(g) maintenance and child support;
(h) a burial plot for the judgment debtor and the debtor's family;
(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004;
(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706;
(k) the judgment debtor's interest in any unmatured life insurance contracts owned by the judgment debtor;
(l) as provided in 25-13-603, a medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220 to the extent of contributions made before the suit resulting in judgment was filed and the earnings on those contributions; and
(m) payments from the end of watch trust provided in 2-15-2040 through 2-15-2045.
(2) Veterans' and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:
(a) child support; or
(b) maintenance to be paid to a spouse or former spouse.

History: En. Sec. 3, Ch. 302, L. 1987; amd. Sec. 1, Ch. 240, L. 1989; amd. Sec. 21, Ch. 552, L. 1997; amd. Sec. 1, Ch. 262, L. 1999; amd. Sec. 2, Ch. 4, L. 2001; amd. Sec. 1, Ch. 352, L. 2001; amd. Sec. 119, Ch. 429, L. 2003; amd. Sec. 1, Ch. 397, L. 2007; amd. Sec. 3, Ch. 298, L. 2017; amd. Sec. 1, Ch. 162, L. 2019; amd. Sec. 10, Ch. 669, L. 2023.

Cross-References

Assignment or attachment of workers' compensation payments, 39-71-743.

25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:
(1) the judgment debtor's interest, not to exceed $7,000 in aggregate value, to the extent of a value not exceeding $1,250 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;
(2) the judgment debtor's interest, not to exceed $4,000 in value, in one motor vehicle; and
(3) the judgment debtor's interest, not to exceed $4,500 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor.

History: En. Sec. 4, Ch. 302, L. 1987; amd. Sec. 1, Ch. 130, L. 1989; amd. Sec. 1, Ch. 237, L. 1999; amd. Sec. 2, Ch. 397, L. 2007; amd. Sec. 1, Ch. 539, L. 2021.

25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for the property, the debtor is entitled for 6 months to an exemption of proceeds that are traceable, such as in a bank or savings account.
(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable.
(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: En. Sec. 5, Ch. 302, L. 1987; amd. Sec. 448, Ch. 56, L. 2009.

25-13-611. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 1, Ch. 8, L. 1905; re-en. Sec. 6824, Rev. C. 1907; amd. Sec. 1, Ch. 232, L. 1921; re-en. Sec. 9427, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 690; re-en. Sec. 9427, R.C.M. 1935; R.C.M. 1947, 93-5813; amd. Sec. 1, Ch. 210, L. 1985.

25-13-612. Repealed. Sec. 11, Ch. 302, L. 1987.

History: Ap. p. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; Sec. 93-5814, R.C.M. 1947; Ap. p. Sec. 1, Ch. 127, L. 1937; re-en. Sec. 9428.1, R.C.M. 1935; Sec. 93-5815, R.C.M. 1947; R.C.M. 1947, 93-5814(part), 93-5815; amd. Sec. 2, Ch. 210, L. 1985.

25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-609(1), the following property is exempt from all judgment debtors:

(a) all necessary firefighting equipment and facilities of a governmental fire agency organized under Title 7, chapter 33;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property and the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds owned or held by any town or incorporated city or dedicated by a city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) The property listed in this section is not exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien on the property, and a person who is not a resident of this state is not entitled to these exemptions.

History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 3, Ch. 210, L. 1985; amd. Sec. 37, Ch. 83, L. 1989; amd. Sec. 6, Ch. 449, L. 2007.

Cross-References

Payment of judgments against state, 2-9-315.
Payment of judgments against governmental entities, 2-9-316.
Attachment and execution against governmental entity, 2-9-318.
Payment of costs by governmental entities, Title 25, ch. 10, part 7.
Judgments against county or county officer, 25-13-205.
Garnishment of public officers, 25-13-504.

25-13-614. Earnings of judgment debtor. (1) Earnings of a judgment debtor that are not subject to garnishment, as provided in this section, are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which the debtor's disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of the debtor's disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if the debtor is supporting the debtor's spouse or dependent child, other than a spouse or child for whom the order is issued; or

(ii) 60% of the judgment debtor's disposable earnings for that week if the debtor is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if the earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of the workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672.

History: En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985; amd. Sec. 7, Ch. 302, L. 1987; amd. Sec. 2, Ch. 301, L. 1989; amd. Sec. 449, Ch. 56, L. 2009.

Cross-References

Offset of tax refunds or other funds due taxpayer to pay for delinquent taxes — certain wages exempt, 15-30-2629.

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

25-13-616. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 4, Ch. 210, L. 1985.

25-13-617. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 2, Ch. 120, L. 1933; re-en. Sec. 9430.2, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1941; R.C.M. 1947, 93-5820; amd. Sec. 8, Ch. 370, L. 1981; amd. Sec. 5, Ch. 210, L. 1985.

Part 7
Sale on Execution

Part Cross-References

Return of damaged property for sale by officer, 27-17-404.
Sale of attached property, Title 27, ch. 18, part 8.
Warranty upon judicial sale, 30-11-222.
Sale of abandoned vehicles in manner of sale on execution, 61-12-404.

25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county where the sale is to take place for a time that is reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place for not less than 5 days or more than 10 days and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county if there is one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy of the notice once a week for the same period in some newspaper published in the county if there is one. The notice must be substantially as follows:

SHERIFF'S SALE

..........., Plaintiff,
vs.
..........., Defendant,

To be sold at sheriff's sale on the .... day of ...., 20..., at .... (Here insert brief description of property.)

Signed ....,
Sheriff

(2) Any sheriff publishing a notice that is not in accordance with the form set forth in subsection (1)(c) and that costs more than that notice is not entitled to any costs for publication of the notice but is personally liable for the payment of the publication.

History: En. Sec. 199, p. 83, Bannack Stat.; amd. Sec. 221, p. 180, L. 1867; re-en. Sec. 271, p. 86, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 321, p. 126, L. 1877; re-en. Sec. 321, 1st Div. Rev. Stat. 1879; re-en. Sec. 332, 1st Div. Comp. Stat. 1887; amd. Sec. 1225, C. Civ. Proc. 1895; re-en. Sec. 6828, Rev. C. 1907; re-en. Sec. 9432, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 692; re-en. Sec. 9432, R.C.M. 1935; R.C.M. 1947, 93-5824; amd. Sec. 1, Ch. 235, L. 1985; amd. Sec. 5, Ch. 88, L. 1987; amd. Sec. 57, Ch. 51, L. 1999.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.
County printing, Title 18, ch. 7, part 4.
Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.
Sale of property to satisfy agisters' liens and liens for service, 71-3-1203.

25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits $500 to the aggrieved party in addition to the party's actual damages. A person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment, if the judgment is satisfied before sale, forfeits $500.

History: En. Sec. 200, p. 84, Bannack Stat.; re-en. Sec. 222, p. 180, L. 1867; re-en. Sec. 272, p. 86, Cod. Stat. 1871; re-en. Sec. 322, p. 127, L. 1877; re-en. Sec. 322, 1st Div. Rev. Stat. 1879; re-en. Sec. 333, 1st Div. Comp. Stat. 1887; re-en. Sec. 1226, C. Civ. Proc. Sec. 1895; re-en. Sec. 6829, Rev. C. 1907; re-en. Sec. 9433, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 693; re-en. Sec. 9433, R.C.M. 1935; R.C.M. 1947, 93-5825; amd. Sec. 450, Ch. 56, L. 2009.

Cross-References

Damages, Title 27, ch. 1, part 2.

25-13-703. Postponement of sale. Good cause therefor appearing, the officer holding the execution may postpone any sale noticed thereunder for a period not exceeding 15 days, by public proclamation at the time and place fixed in the notice of sale and by posting a notice in three public places in the township where the property has previously been noticed to be sold.

History: En. Sec. 1, Ch. 120, L. 1915; re-en. Sec. 9435, R.C.M. 1921; re-en. Sec. 9435, R.C.M. 1935; R.C.M. 1947, 93-5827.

25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more property may be sold. The officer holding the execution or the officer's deputy may not become a purchaser or be interested in any purchase at the sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in parcels that are likely to bring the highest price. When the sale is of real property consisting of several known lots or parcels, the lots or parcels must be sold separately, or when a portion of the real property is claimed by a third person and the person requires it to be sold separately, that portion must be sold separately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, must be sold when the property consists of several known lots or parcels or of articles that can be sold to advantage separately, and the sheriff shall follow the directions.

History: En. Sec. 201, p. 84, Bannack Stat.; amd. Sec. 223, p. 180, L. 1867; re-en. Sec. 273, p. 86, Cod. Stat. 1871; re-en. Sec. 323, p. 127, L. 1877; re-en. Sec. 323, 1st Div. Rev. Stat. 1879; re-en. Sec. 334, 1st Div. Comp. Stat. 1887; re-en. Sec. 1227, C. Civ. Proc. 1895; re-en. Sec. 6830, Rev. C. 1907; re-en. Sec. 9434, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 694; re-en. Sec. 9434, R.C.M. 1935; R.C.M. 1947, 93-5826; amd. Sec. 451, Ch. 56, L. 2009.

Cross-References

Execution against property of judgment debtor, 25-13-304.
How writ executed, 25-13-402.

25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by the purchaser for the property sold to the purchaser at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned by the subsequent sale, the officer may recover the amount of the loss, with costs, from the bidder refusing to pay, in any court of competent jurisdiction. The person refusing to pay the costs that have accrued by reason of the unpaid bid is guilty of contempt of court and may be punished accordingly.

History: En. Sec. 202, p. 85, Bannack Stat.; amd. Sec. 224, p. 181, L. 1867; re-en. Sec. 274, p. 86, Cod. Stat. 1871; amd. Sec. 324, p. 127, L. 1877; re-en. Sec. 324, 1st Div. Rev. Stat. 1879; re-en. Sec. 335, 1st Div. Comp. Stat. 1887; en. Sec. 1228, C. Civ. Proc. 1895; re-en. Sec. 6831, Rev. C. 1907; re-en. Sec. 9436, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 695; re-en. Sec. 9436, R.C.M. 1935; R.C.M. 1947, 93-5828; amd. Sec. 452, Ch. 56, L. 2009.

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may reject any subsequent bid of that purchaser.

History: En. Sec. 325, p. 128, L. 1877; re-en. Sec. 325, 1st Div. Rev. Stat. 1879; re-en. Sec. 336, 1st Div. Comp. Stat. 1887; re-en. Sec. 1229, C. Civ. Proc. 1895; re-en. Sec. 6832, Rev. C. 1907; re-en. Sec. 9437, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 696; re-en. Sec. 9437, R.C.M. 1935; R.C.M. 1947, 93-5829; amd. Sec. 453, Ch. 56, L. 2009.

25-13-707. Liability of officer after resale. Sections 25-13-705 and 25-13-706 must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

History: En. Sec. 326, p. 128, L. 1877; re-en. Sec. 326, 1st Div. Rev. Stat. 1879; re-en. Sec. 337, 1st Div. Comp. Stat. 1887; re-en. Sec. 1230, C. Civ. Proc. 1895; re-en. Sec. 6833, Rev. C. 1907; re-en. Sec. 9438, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 697; re-en. Sec. 9438, R.C.M. 1935; R.C.M. 1947, 93-5830.

Cross-References

Judgments against county or county officer, 25-13-205.

25-13-708. Conveyance of personal property capable of manual delivery. When the purchaser of any personal property capable of manual delivery pays the purchase price, the officer making the sale shall deliver to the purchaser the property and, if desired, execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied.

History: En. Sec. 205, p. 85, Bannack Stat.; re-en. Sec. 227, p. 181, L. 1867; re-en. Sec. 277, p. 87, Cod. Stat. 1871; re-en. Sec. 327, p. 128, L. 1877; re-en. Sec. 327, 1st Div. Rev. Stat. 1879; re-en. Sec. 338, 1st Div. Comp. Stat. 1887; amd. Sec. 1231, C. Civ. Proc. 1895; re-en. Sec. 6834, Rev. C. 1907; re-en. Sec. 9439, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 698; re-en. Sec. 9439, R.C.M. 1935; R.C.M. 1947, 93-5831; amd. Sec. 6, Ch. 89, L. 1999.

25-13-709. Conveyance of personal property not capable of manual delivery. When the purchaser of any personal property not capable of manual delivery pays the purchase price, the officer making the sale shall execute and deliver to the purchaser a certificate of sale. The certificate conveys to the purchaser all rights that the debtor had in the property on the day the execution or attachment was levied.

History: En. Sec. 228, p. 181, L. 1867; re-en. Sec. 278, p. 87, Cod. Stat. 1871; re-en. Sec. 328, p. 128, L. 1877; re-en. Sec. 328, 1st Div. Rev. Stat. 1879; re-en. Sec. 339, 1st Div. Comp. Stat. 1887; amd. Sec. 1232, C. Civ. Proc. 1895; re-en. Sec. 6835, Rev. C. 1907; re-en. Sec. 9440, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 699; re-en. Sec. 9440, R.C.M. 1935; R.C.M. 1947, 93-5832; amd. Sec. 7, Ch. 89, L. 1999.

25-13-710. Real property — what interest transferred. Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of 2 years' unexpired term, the sale is absolute. In all other cases, the property is subject to redemption, as provided in part 8 of this chapter.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-711. Real property — certificate of sale. (1) Upon a sale of real property, the officer must give to the purchaser a certificate of sale, containing:

(a) a particular description of the property sold;
(b) the price bid for each distinct lot or parcel;
(c) the whole price paid;
(d) when subject to redemption, a statement to that effect.

(2) A duplicate of such certificate must be filed by the officer in the office of the county clerk.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-712. Property subject to a security interest — disposition of proceeds, security agreement. (1) When the property taken under 25-13-505 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under execution, such creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Execution upon property subject to security interest, 25-13-505, 25-13-506.
Uniform Commercial Code — secured transactions, Title 30, ch. 9A.

25-13-713. Procedure when sale invalidated — revival of judgment. (1) If the purchaser of real property sold on execution or the purchaser's successor in interest is evicted from the property because of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, the purchaser may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at a sheriff's sale or the purchaser's successor in interest fails to recover possession because of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction shall, on petition of the party in interest or the party's attorney, revive the original judgment for the amount paid by the purchaser at the sale, with interest on the judgment from the time of payment at the same rate that the original judgment bore. When revived, the judgment has the same effect as an original judgment of the court of that date, bearing interest as provided in this subsection. Any other or after-acquired property, rents, issues, or profits of the debtor is subject to levy and sale under execution in satisfaction of the debt. However, property of the debtor sold bona fide before the filing of the petition is not subject to the lien of the judgment. The notice of the filing of the petition must be made by filing a notice in the office of the county clerk where the property is situated, and the judgment must be revived in the name of the original plaintiff or plaintiffs for the use of the petitioner, the party in interest.

History: En. Sec. 237, p. 183, L. 1867; re-en. Sec. 286, p. 89, Cod. Stat. 1871; re-en. Sec. 336, p. 132, L. 1877; re-en. Sec. 336, 1st Div. Rev. Stat. 1879; re-en. Sec. 347, 1st Div. Comp. Stat. 1887; re-en. Sec. 1241, C. Civ. Proc. 1895; re-en. Sec. 6844, Rev. C. 1907; re-en. Sec. 9450, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 708; re-en. Sec. 9450, R.C.M. 1935; R.C.M. 1947, 93-5842; amd. Sec. 454, Ch. 56, L. 2009.

25-13-714. Validation of defective judicial sales. All judicial sales of real property prior to January 1, 1973, provided no action is pending on July 1, 1973, to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale and, when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of the judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, the manner of making or conducting the sale, or the recitals or references in such deed shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 80, L. 1973; R.C.M. 1947, 93-5846.

Part 8
Redemption of Real Property

Part Cross-References

Docketing of judgment — lien, 25-9-301.
Rights of redemption applicable, 71-1-228.
Action to redeem mortgage, 71-1-230.
Redemption by multiple mortgagors, 71-1-231.
Liens generally, Title 71, ch. 3.

25-13-801. Who may redeem — definition. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner provided in this part by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or the judgment debtor's successor in interest in the whole or any part of the property and, if the judgment debtor or successor is a corporation, a stockholder of the corporation;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part of the property subsequent to that on which the property is sold. If a corporation is the creditor, then any stockholder of the corporation may redeem.

(2) The persons mentioned in subsection (1)(b) are, in this part, termed "redemptioners".

History: En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 701; amd. Sec. 1, Ch. 16, L. 1927; re-en. Sec. 9442, R.C.M. 1935; amd. Sec. 55, Ch. 535, L. 1975; R.C.M. 1947, 93-5834; amd. Sec. 455, Ch. 56, L. 2009.

Cross-References

Docketing of judgment — lien, 25-9-301.
Prejudgment attachment, Title 27, ch. 18.

25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of the purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes that the purchaser may have paid on the property after purchase and interest on that amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which the purchase was made, the amount of the lien with interest.

History: En. Sec. 231, p. 181, L. 1867; re-en. Sec. 281, p. 88, Cod. Stat. 1871; amd. Sec. 331, p. 129, L. 1877; re-en. Sec. 331, 1st Div. Rev. Stat. 1879; re-en. Sec. 342, 1st Div. Comp. Stat. 1887; amd. Sec. 1235, C. Civ. Proc. 1895; re-en. Sec. 6838, Rev. C. 1907; re-en. Sec. 9443, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 702; re-en. Sec. 9443, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1937; R.C.M. 1947, 93-5835; amd. Sec. 1, Ch. 503, L. 1991; amd. Sec. 456, Ch. 56, L. 2009.

Cross-References

Year defined, 1-1-301.

25-13-803. Subsequent redemptions — when permitted — amount paid. (1) If property is redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem the property from the last redemptioner on paying the sum on the last redemption with interest at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes that the last redemptioner may have paid on the property after the redemption by the last redemptioner with interest at the same rate on that amount, and the amount of any liens held by the last redemptioner prior to the last redemptioner's own lien, with interest. However, the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as any redemptioner is disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, by paying the sum paid on the last previous redemption with interest on the sum at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes that the last previous redemptioner paid after the redemption by the last previous redemptioner with interest at the same rate, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to the last redemptioner's own lien, with interest at the same rate.

(2) If the judgment debtor or the judgment debtor's spouse redeems, the judgment debtor or the spouse shall make the same payments that are required to effect a redemption by a redemptioner.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 2, Ch. 503, L. 1991; amd. Sec. 457, Ch. 56, L. 2009.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for the stockholder's benefit the amount paid to effect the redemption, with interest on that amount at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of payment, together with any taxes or assessments that may have been paid by the redemptioner, with interest at the same rate on the amount of the payment.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after the redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for the redeeming stockholder's benefit a sum that bears the same proportion to the amount necessary to redeem that the number of shares owned by the contributing stockholder or stockholders bears to the number of shares of the corporation outstanding, with interest on the sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a similar proportion of the taxes or assessments paid by the redeeming stockholder, with interest at the same rate. If the corporation does not redeem the property within the time and in the manner and form as described in this section, the redeeming and contributing stockholders are entitled to receive a sheriff's deed for the property redeemed and shall succeed to the property as tenants in common in the proportions, respectively, that they shall respectively pay or contribute to the redemption. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute, present an affidavit setting forth the number of shares of stock owned by the stockholder and, to the best of the stockholder's knowledge, the number of shares of stock of the corporation outstanding.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(3); amd. Sec. 3, Ch. 503, L. 1991; amd. Sec. 458, Ch. 56, L. 2009.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(4); amd. Sec. 4, Ch. 503, L. 1991.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if the redemptioner has or acquired any liens other than that upon which the redemption was made, notice must in the same manner be given to the sheriff and filed with the county clerk. If the notice is not filed, the property may be redeemed without paying the tax, assessments, or lien.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 459, Ch. 56, L. 2009.

Cross-References

Liability of Clerk relating to duties as Recorder, 7-4-2623.
Fees of County Clerk, 7-4-2631.

25-13-807. Papers redemptioner must produce. A redemptioner shall produce, to the officer or person from whom the redemptioner seeks to redeem, and serve with the notice to the sheriff:

(1) (a) a copy of the docket of the judgment under which the redemptioner claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed;

(b) if upon a mortgage or other lien, a note of the record of the mortgage or lien, certified by the county clerk; or

(c) if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish the redemptioner's claim, verified by the affidavit of the redemptioner or of a subscribing witness;

(3) an affidavit by the redemptioner or the redemptioner's agent showing the amount then actually due upon the lien.

History: En. Sec. 234, p. 182, L. 1867; re-en. Sec. 284, p. 88, Cod. Stat. 1871; re-en. Sec. 334, p. 131, L. 1877; re-en. Sec. 334, 1st Div. Rev. Stat. 1879; re-en. Sec. 345, 1st Div. Comp. Stat. 1887; amd. Sec. 1238, C. Civ. Proc. 1895; re-en. Sec. 6841, Rev. C. 1907; re-en. Sec. 9446, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 705; re-en. Sec. 9446, R.C.M. 1935; R.C.M. 1947, 93-5838; amd. Sec. 460, Ch. 56, L. 2009.

Cross-References

Search of records, 7-4-2621.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for the petitioner or redemptioner to the officer who made the sale or, if the officer's term of office has expired, to the successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part); amd. Sec. 461, Ch. 56, L. 2009.

25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor redeems, the effect of the sale is terminated and the debtor is restored to the debtor's own estate. If the spouse redeems, the spouse must become the owner of the debtor spouse's interest, subject to any liens on the property at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made shall execute and deliver to the debtor or the judgment debtor's spouse a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. The certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk shall note the record of the certificate of redemption in the margin of the record of the certificate of sale.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 462, Ch. 56, L. 2009.

Cross-References

Power of judicial officers to take acknowledgments, 3-1-404.

25-13-810. When purchaser entitled to conveyance. If a redemption is not made within 1 year after the sale, the purchaser or the purchaser's assignee is entitled to a conveyance. If redeemed, whenever 60 days have elapsed and no other redemption has been made and notice of redemption is given and the time for redemption has expired, the last redemptioner or the redemptioner's assignee is entitled to a sheriff's deed. In all cases, the judgment debtor has the entire period of 1 year from the date of the sale to redeem the property.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 463, Ch. 56, L. 2009.

Cross-References

Year defined, 1-1-301.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale is entitled to a conveyance of the property, the conveyance must be executed to the purchaser by the officer who made the sale if the officer is still in office, but if the officer who made the sale is not in office at the time the purchaser may be entitled to the conveyance, then the conveyance must be executed by the officer's successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part); amd. Sec. 464, Ch. 56, L. 2009.

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of land at execution sales is not entitled to the possession of the land as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for the debtor and the debtor's family. The intention of this section is to ensure to the debtor the possession of the debtor's land during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part); amd. Sec. 465, Ch. 56, L. 2009.

25-13-822. Rents and profits during redemption period — accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of the redemptioner's redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation of the property. However, when any rents or profits have been received by the judgment creditor or purchaser or the creditor's or purchaser's assigns from the property sold preceding the redemption, the amount of the rents and profits must be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for redemption, demands in writing of the purchaser or creditor or the purchaser's or creditor's assigns a written and verified statement of the amount of the rents and profits received, the period for redemption is extended 5 days after the sworn statement is given by the purchaser or the purchaser's assigns to the redemptioner or debtor. If the purchaser or the purchaser's assigns, for a period of 1 month from and after the demand, fail or refuse to give the statement, the redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of the rents and profits, and until 15 days from and after the final determination of the action, the right of redemption is extended to the redemptioner or debtor.

History: En. Sec. 236, p. 183, L. 1867; rep. Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 1240, C. Civ. Proc. 1895; re-en. Sec. 6843, Rev. C. 1907; re-en. Sec. 9448, R.C.M. 1921; Cal. C. Civ. Proc. 707; re-en. Sec. 9448, R.C.M. 1935; R.C.M. 1947, 93-5840; amd. Sec. 5, Ch. 503, L. 1991; amd. Sec. 466, Ch. 56, L. 2009.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. However, it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use the property in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings on the property, or to use wood or timber on the property for the repair of buildings on the property, for the repair of fences, or for fuel for the person's family while the person occupies the property.

History: En. Sec. 235, p. 182, L. 1867; re-en. Sec. 285, p. 89, Cod. Stat. 1871; re-en. Sec. 335, p. 131, L. 1877; re-en. Sec. 335, 1st Div. Rev. Stat. 1879; re-en. Sec. 346, 1st Div. Comp. Stat. 1887; re-en. Sec. 1239, C. Civ. Proc. 1895; re-en. Sec. 6842, Rev. C. 1907; re-en. Sec. 9447, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 706; re-en. Sec. 9447, R.C.M. 1935; R.C.M. 1947, 93-5839; amd. Sec. 467, Ch. 56, L. 2009.

Cross-References

When defendant may be arrested, 27-16-102.
Injunctions, Title 27, ch. 19.
General duty of care, 28-1-201.
Waste prohibited, 71-1-106.
Injunction to prevent injury to property, 71-1-227.

25-13-824. Enjoining injury to property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References
When defendant may be arrested, 27-16-102.
Injunctions, Title 27, ch. 19.
General duty of care, 28-1-201.
Waste prohibited, 71-1-106.
Injunction to prevent injury to property, 71-1-227.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser or any person who may have succeeded to the purchaser's interest may, after the purchaser's estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

History: En. Sec. 262, p. 188, L. 1867; re-en. Sec. 311, p. 95, L. 1871; re-en. Sec. 361, p. 139, L. 1877; re-en. Sec. 361, 1st Div. Rev. Stat. 1879; re-en. Sec. 373, 1st Div. Comp. Stat. 1887; re-en. Sec. 1319, C. Civ. Proc. 1895; re-en. Sec. 6879, Rev. C. 1907; re-en. Sec. 9497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 746; re-en. Sec. 9497, R.C.M. 1935; R.C.M. 1947, 93-6221; amd. Sec. 468, Ch. 56, L. 2009.

Cross-References
Injury to property defined, 27-1-106.
Damages generally, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.

Part 9
Disposal of Foreclosed Agricultural Land (Terminated)

25-13-901. Terminated. Sec. 6, Ch. 472, L. 1987.
History: En. Sec. 1, Ch. 472, L. 1987.

25-13-902. Terminated. Sec. 6, Ch. 472, L. 1987.
History: En. Sec. 2, Ch. 472, L. 1987.

25-13-903. Terminated. Sec. 6, Ch. 472, L. 1987.
History: En. Sec. 3, Ch. 472, L. 1987.

25-13-904. Terminated. Sec. 6, Ch. 472, L. 1987.
History: En. Sec. 4, Ch. 472, L. 1987.

CHAPTER 14
PROCEEDINGS IN AID OF EXECUTION

Part 1 — Proceedings to Determine Availability of Property

25-14-101. Debtor to answer concerning debtor's property when execution unsatisfied.
25-14-102. Procedure when debtor withholding property from execution — arrest.
25-14-103. Debtors of judgment debtor and those holding debtor's property to answer.
25-14-104. Procedure when debt to or ownership of judgment debtor denied.
25-14-105. Requiring witnesses to testify.
25-14-106. Immunity of witnesses to criminal proceedings.
25-14-107. Order to apply property to satisfaction of judgment.
25-14-108. Contempt to disobey referee's orders.

Part 2 — Appointment of Receiver

25-14-201. Appointment of receiver — notice.
25-14-202. Order appointing receiver to be filed.
25-14-203. Oath and undertaking.
25-14-204. When property vests in receiver.
25-14-205. Relation back of receiver's title.

Part 3 — Discharge of Imprisoned Judgment Debtor

25-14-301. Persons imprisoned to be discharged.
25-14-302. Notice of application for discharge.
25-14-303. Service of notice.
25-14-304. Hearing on application.
25-14-305. Interrogatories directed to prisoner by plaintiff.
25-14-306. Prisoner to take oath.
25-14-307. Order of discharge.
25-14-308. Reapplication for discharge.
25-14-309. Effect of discharge.

25-14-310. Judgment unaffected.
25-14-311. Discharge at instance of plaintiff.
25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner.

Part 1
Proceedings to Determine Availability of Property

Part Cross-References

Referees, Title 25, ch. 7, part 7.

25-14-101. Debtor to answer concerning debtor's property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to a levying officer or the sheriff of the county where the judgment debtor resides or, if the judgment debtor does not reside in this state, to a levying officer or the sheriff of the county where the judgment is docketed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after the return is made, is entitled to an order from a judge of the court requiring the judgment debtor to appear and answer concerning the judgment debtor's property before the judge or a referee appointed by the judge at a time and place specified in the order. However, a judgment debtor who is a state resident may not be required to attend before a judge or referee outside the county in which the judgment debtor resides.

History: En. Sec. 215, p. 88, Bannack Stat.; re-en. Sec. 238, p. 184, L. 1867; re-en. Sec. 287, p. 90, Cod. Stat. 1871; re-en. Sec. 338, p. 133, L. 1877; re-en. Sec. 338, 1st Div. Rev. Stat. 1879; re-en. Sec. 350, 1st Div. Comp. Stat. 1887; re-en. Sec. 1260, C. Civ. Proc. 1895; re-en. Sec. 6848, Rev. C. 1907; re-en. Sec. 9454, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 714; re-en. Sec. 9454, R.C.M. 1935; R.C.M. 1947, 93-5901; amd. Sec. 108, Ch. 575, L. 1981; amd. Sec. 4, Ch. 457, L. 2007.

Cross-References

Rules for determining residence, 1-1-215.
Return of execution, 25-13-404.
Clerk to record returned execution when levy on real property, 25-13-405.

25-14-102. Procedure when debtor withholding property from execution — arrest. (1) After the issuing of an execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court that any judgment debtor has property that the judgment debtor unjustly refuses to apply toward the satisfaction of the judgment, the judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge or a referee appointed by the judge to answer concerning the refusal. Proceedings may be had for the application of the property of the judgment debtor toward the satisfaction of the judgment that are provided for upon the return of an execution.

(2) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor or the judgment creditor's agent or attorney, if it appears to the judge that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring the debtor before the judge. Upon being brought before the judge, the judgment debtor may be ordered to enter into an undertaking with sufficient surety that the judgment debtor will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination of the proceedings, and will not in the meantime dispose of any portion of the judgment debtor's property that is not exempt from execution. In default of entering into the undertaking, the judgment debtor may be committed to prison.

History: En. Sec. 216, p. 88, Bannack Stat.; en. Sec. 239, p. 184, L. 1867; re-en. Sec. 288, p. 90, Cod. Stat. 1871; re-en. Sec. 339, p. 133, L. 1877; re-en. Sec. 339, 1st Div. Rev. Stat. 1879; re-en. Sec. 351, 1st Div. Comp. Stat. 1887; re-en. Sec. 1261, C. Civ. Proc. 1895; re-en. Sec. 6849, Rev. C. 1907; re-en. Sec. 9455, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 715; re-en. Sec. 9455, R.C.M. 1935; R.C.M. 1947, 93-5902; amd. Sec. 469, Ch. 56, L. 2009.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.
Effect of discharge, 25-14-309.
Discharge at instance of plaintiff, 25-14-311.
Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.
Affidavits, Title 26, ch. 1, part 10.

25-14-103. Debtors of judgment debtor and those holding debtor's property to answer. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment or upon proof, by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of the judgment debtor or is indebted to the judgment debtor in an amount exceeding $50, the judge may, by an order, require the person or corporation or any officer or member of the corporation to appear at a specified time and place before the judge or a referee appointed by the judge and answer concerning the debt.

History: **En. Sec. 218, p. 88, Bannack Stat.; re-en. Sec. 241, p. 184, L. 1867; re-en. Sec. 290, Cod. Stat. 1871; re-en. Sec. 341, p. 134, L. 1877; re-en. Sec. 341, 1st Div. Rev. Stat. 1879; re-en. Sec. 353, 1st Div. Comp. Stat. 1887; re-en. Sec. 1263, C. Civ. Proc. 1895; re-en. Sec. 6851, Rev. C. 1907; re-en. Sec. 9457, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 717; re-en. Sec. 9457, R.C.M. 1935; R.C.M. 1947, 93-5904; amd. Sec. 470, Ch. 56, L. 2009.**

Cross-References

Debts owed to judgment debtor, 25-13-502.
Property claimed by third persons, 25-13-503.
Affidavits, Title 26, ch. 1, part 10.

25-14-104. Procedure when debt to or ownership of judgment debtor denied. If it appears that a person or corporation alleged to have property of the judgment debtor or to be indebted to the judgment debtor claims an interest in the property adverse to the judgment debtor or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against the person or corporation for the recovery of the interest or debt. The court or judge may, by order, forbid a transfer or other disposition of the interest or debt until an action can be commenced and prosecuted to judgment. The order may be modified or vacated by the judge granting the order or the court in which the action is brought, at any time, upon terms that are just.

History: **En. Sec. 221, p. 89, Bannack Stat.; re-en. Sec. 244, p. 185, L. 1867; re-en. Sec. 293, Cod. Stat. 1871; re-en. Sec. 344, p. 135, L. 1877; re-en. Sec. 344, 1st Div. Rev. Stat. 1879; re-en. Sec. 356, 1st Div. Comp. Stat. 1887; re-en. Sec. 1266, C. Civ. Proc. 1895; re-en. Sec. 6854, Rev. C. 1907; re-en. Sec. 9460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 720; re-en. Sec. 9460, R.C.M. 1935; R.C.M. 1947, 93-5907; amd. Sec. 471, Ch. 56, L. 2009.**

Cross-References

Property claimed by third persons, 25-13-503.

25-14-105. Requiring witnesses to testify. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under parts 1 and 2 of this chapter, in the same manner as upon the trial of an issue.

History: **En. Sec. 219, p. 88, Bannack Stat.; re-en. Sec. 242, p. 185, L. 1867; re-en. Sec. 291, Cod. Stat. 1871; re-en. Sec. 342, p. 134, L. 1877; re-en. Sec. 342, 1st Div. Rev. Stat. 1879; re-en. Sec. 354, 1st Div. Comp. Stat. 1887; re-en. Sec. 1264, C. Civ. Proc. 1895; re-en. Sec. 6852, Rev. C. 1907; re-en. Sec. 9458, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 718; re-en. Sec. 9458, R.C.M. 1935; R.C.M. 1947, 93-5905.**

Cross-References

Testify defined, 1-1-202.
Subpoenas and witnesses, Title 26, ch. 2.

25-14-106. Immunity of witnesses to criminal proceedings. A party or witness examined in proceedings authorized by parts 1 and 2 of this chapter is not excused from answering a question on the ground that the party's or witness's examination will tend to convict the party or witness of the commission of a fraud or to prove that the party or witness has been a party or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose or that the party or witness or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt that was due to the judgment debtor or to a person in the judgment debtor's behalf. However, an answer cannot be used as evidence against the person answering in a criminal action or criminal proceeding.

History: **En. Sec. 1268, C. Civ. Proc. 1895; re-en. Sec. 6856, Rev. C. 1907; re-en. Sec. 9462, R.C.M. 1921; re-en. Sec. 9462, R.C.M. 1935; R.C.M. 1947, 93-5909; amd. Sec. 472, Ch. 56, L. 2009.**

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

25-14-107. Order to apply property to satisfaction of judgment. The judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment.

History: En. Sec. 220, p. 89, Bannack Stat.; re-en. Sec. 243, p. 185, L. 1867; re-en. Sec. 292, Cod. Stat. 1871; re-en. Sec. 343, p. 135, L. 1877; re-en. Sec. 343, 1st Div. Rev. Stat. 1879; re-en. Sec. 355, 1st Div. Comp. Stat. 1887; re-en Sec. 1265, C. Civ. Proc. 1895; re-en. Sec. 6853, Rev. C. 1907; re-en. Sec. 9459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 719; re-en. Sec. 9459, R.C.M. 1935; R.C.M. 1947, 93-5906.

Cross-References

Debts owed to judgment debtor, 25-13-502.
Property claimed by third persons, 25-13-503.
Property exempt from execution, Title 25, ch. 13, part 6.

25-14-108. Contempt to disobey referee's orders. If any person, party, or witness disobeys an order of the referee, properly made in the proceedings before the referee under parts 1 and 2 of this chapter, the person, party, or witness may be punished by the court or judge ordering the reference for a contempt.

History: En. Sec. 222, p. 89, Bannack Stat.; re-en. Sec. 245, p. 185, L. 1867; re-en. Sec. 294, Cod. Stat. 1871; re-en. Sec. 345, p. 135, L. 1877; re-en. Sec. 345, 1st Div. Rev. Stat. 1879; re-en. Sec. 357, 1st Div. Comp. Stat. 1887; re-en. Sec. 1267, C. Civ. Proc. 1895; re-en. Sec. 6855, Rev. C. 1907; re-en. Sec. 9461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 721; re-en. Sec. 9461, R.C.M. 1935; R.C.M. 1947, 93-5908; amd. Sec. 473, Ch. 56, L. 2009.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2
Appointment of Receiver

Part Cross-References

Receivers, Title 27, ch. 20.

25-14-201. Appointment of receiver — notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, as prescribed in parts 1 and 2 of this chapter, the judge may make an order appointing a receiver of the property of the judgment debtor. At least 2 days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor unless the judge is satisfied that the judgment debtor cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with notice or direct notice to be given in any manner that the judge thinks proper. However, when the order to attend and be examined has been served upon the judgment debtor, a receiver may be appointed upon the return day of the service or at the close of the examination without further notice to the judgment debtor.

History: En. Sec. 1269, C. Civ. Proc. 1895; re-en. Sec. 6857, Rev. C. 1907; re-en. Sec. 9463, R.C.M. 1921; re-en. Sec. 9463, R.C.M. 1935; R.C.M. 1947, 93-5910; amd. Sec. 474, Ch. 56, L. 2009.

Cross-References

Service of process and other papers, Title 25, ch. 3.
Receivers — appointment procedure, Title 27, ch. 20, part 2.

25-14-202. Order appointing receiver to be filed. An order appointing a receiver must be filed in the office of the clerk of the court where the judgment is docketed or a transcript of the original docket is filed.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part); amd. Sec. 109, Ch. 575, L. 1981.

Cross-References

Duties of County Clerk and Recorder, 7-4-2611.

25-14-203. Oath and undertaking. The receiver must take and subscribe the official oath and give an undertaking, if required by the judge.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part).

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.
Oath and undertaking to faithfully discharge duties, 27-20-301.

25-14-204. When property vests in receiver. The property of the judgment debtor is vested in a receiver who has qualified from the time of filing the order appointing the receiver, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order is filed with the clerk of the court or a certified copy of the order, as the case may be, is filed with the clerk of the county where it is situated.

(2) When the judgment debtor, at the time when the order is filed, resides in another county of the state, the judgment debtor's personal property is vested in the receiver only from the time when a copy of the order, certified by the clerk in whose office it is filed, is filed with the clerk of the district court of the county where the judgment debtor resides.

History: En. Sec. 1271, C. Civ. Proc. 1895; re-en. Sec. 6859, Rev. C. 1907; re-en. Sec. 9465, R.C.M. 1921; re-en. Sec. 9465, R.C.M. 1935; R.C.M. 1947, 93-5912; amd. Sec. 475, Ch. 56, L. 2009.

Cross-References

Rules for determining residence, 1-1-215.
Powers of receiver, 27-20-302.

25-14-205. Relation back of receiver's title. (1) When the receiver's title to personal property has become vested, as prescribed in 25-14-204, it also extends back by relation for the benefit of the judgment creditor in whose behalf the proceedings were instituted, as follows:

(a) When an order requiring the judgment debtor to attend and be examined has been served before the appointment of a receiver or the judgment debtor has been brought before the judge on arrest, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or the judgment debtor's arrest.

(b) When an order has not been served or an arrest has not been made, as specified in subsection (1)(a), but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor that was in the hands or under the control of the person or corporation required to attend at the time of the service of the order and to a debt then due the judgment debtor from that person or corporation.

(c) In every other case, when notice of the application for the appointment of the receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(2) When the case is within two or more of subsections (1)(a) through (1)(c), the rule most favorable to the judgment creditor must be adopted.

(3) This section does not affect the title of a purchaser in good faith, without notice, and for a valuable consideration or the payment of a debt in good faith and without notice.

History: En. Sec. 1272, C. Civ. Proc. 1895; re-en. Sec. 6860, Rev. C. 1907; re-en. Sec. 9466, R.C.M. 1921; re-en. Sec. 9466, R.C.M. 1935; R.C.M. 1947, 93-5913; amd. Sec. 476, Ch. 56, L. 2009.

Cross-References

Notice — actual and constructive, 1-1-217.
Arrest and bail in civil actions, Title 27, ch. 16.

Part 3
Discharge of Imprisoned Judgment Debtor

Part Cross-References

Arrest and bail in civil actions, Title 27, ch. 16.

25-14-301. Persons imprisoned to be discharged. Any person confined in jail on an execution issued on a judgment rendered in a civil action must be discharged therefrom upon the conditions of this part specified.

History: En. Sec. 107, p. 48, Cod. Stat. 1871; re-en. Sec. 145, p. 74, L. 1877; re-en. Sec. 145, 1st Div. Rev. Stat. 1879; re-en. Sec. 147, 1st Div. Comp. Stat. 1887; re-en. Sec. 2060, C. Civ. Proc. 1895; re-en. Sec. 7257, Rev. C. 1907; re-en. Sec. 9875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1143; re-en. Sec. 9875, R.C.M. 1935; R.C.M. 1947, 93-9601.

25-14-302. Notice of application for discharge. A person referred to in 25-14-301 shall cause a written notice to be given to the plaintiff or the plaintiff's agent or attorney that at a certain time and place the person will apply to a judge of the district court of the county in which the person may be confined for the purpose of obtaining a discharge from imprisonment.

History: En. Sec. 108, p. 48, Cod. Stat. 1871; re-en. Sec. 146, p. 74, L. 1877; re-en. Sec. 146, 1st Div. Rev. Stat. 1879; re-en. Sec. 148, 1st Div. Comp. Stat. 1887; re-en. Sec. 2061, C. Civ. Proc. 1895; re-en. Sec. 7258, Rev. C. 1907; re-en. Sec. 9876, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1144; re-en. Sec. 9876, R.C.M. 1935; R.C.M. 1947, 93-9602; amd. Sec. 477, Ch. 56, L. 2009.

25-14-303. Service of notice. The notice specified in 25-14-302 must be served upon the plaintiff or the plaintiff's agent or attorney at least 1 day before the hearing of the application. If the plaintiff is not a resident of the county and does not have an agent or attorney in the county, the notice will not be served.

History: En. Sec. 109, p. 48, Cod. Stat. 1871; re-en. Sec. 147, p. 74, L. 1877; re-en. Sec. 147, 1st Div. Rev. Stat. 1879; re-en. Sec. 149, 1st Div. Comp. Stat. 1887; re-en. Sec. 2062, C. Civ. Proc. 1895; re-en. Sec. 7259, Rev. C. 1907; re-en. Sec. 9877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1145; re-en. Sec. 9877, R.C.M. 1935; R.C.M. 1947, 93-9603; amd. Sec. 478, Ch. 56, L. 2009.

Cross-References

Rules for determining residence, 1-1-215.

25-14-304. Hearing on application. At the time and place specified in the notice described in 25-14-302, the person must be taken before the judge, who shall examine the person under oath concerning the person's estate, property, and effects, the disposal of the estate, property, and effects, and the person's ability to pay the judgment for which the person is committed. The judge may also hear any other legal or pertinent evidence that may be produced by the debtor or the creditor.

History: En. Sec. 110, p. 48, Cod. Stat. 1871; re-en. Sec. 148, p. 74, L. 1877; re-en. Sec. 148, 1st Div. Rev. Stat. 1879; re-en. Sec. 150, 1st Div. Comp. Stat. 1887; re-en. Sec. 2063, C. Civ. Proc. 1895; re-en. Sec. 7260, Rev. C. 1907; re-en. Sec. 9878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1146; re-en. Sec. 9878, R.C.M. 1935; R.C.M. 1947, 93-9604; amd. Sec. 479, Ch. 56, L. 2009.

25-14-305. Interrogatories directed to prisoner by plaintiff. The plaintiff in the action may, upon such examination, propose to the prisoner any such interrogatories pertinent to the inquiry; and they must, if required by the plaintiff, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

History: En. Sec. 2064, C. Civ. Proc. 1895; re-en. Sec. 7261, Rev. C. 1907; re-en. Sec. 9879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1147; re-en. Sec. 9879, R.C.M. 1935; R.C.M. 1947, 93-9605; amd. Sec. 110, Ch. 575, L. 1981.

25-14-306. Prisoner to take oath. If, upon the examination, the judge is satisfied that the prisoner is entitled to discharge, the judge shall administer to the prisoner the following oath: "I, ..., do solemnly swear that I have not any property, real or personal, in the amount of $50, except property that is by law exempted from being taken in execution, and that I have not any other property now conveyed or concealed or in any way disposed of with design to secure the property to my use or to hinder, delay, or defraud my creditors; so help me God."

History: En. Sec. 111, p. 48, Cod. Stat. 1871; re-en. Sec. 149, p. 74, L. 1877; re-en. Sec. 149, 1st Div. Rev. Stat. 1879; re-en. Sec. 151, 1st Div. Comp. Stat. 1887; re-en. Sec. 2065, C. Civ. Proc. 1895; re-en. Sec. 7262, Rev. C. 1907; re-en. Sec. 9880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1148; re-en. Sec. 9880, R.C.M. 1935; R.C.M. 1947, 93-9606; amd. Sec. 480, Ch. 56, L. 2009.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

25-14-307. Order of discharge. After administering the oath in 25-14-306, the judge shall issue an order that the prisoner be discharged from custody, and the officer, upon the service of the order, shall discharge the prisoner if the prisoner is not imprisoned for another cause.

History: En. Sec. 112, p. 48, Cod. Stat. 1871; re-en. Sec. 150, p. 74, L. 1877; re-en. Sec. 150, 1st Div. Rev. Stat. 1879; re-en. Sec. 152, 1st Div. Comp. Stat. 1887; re-en. Sec. 2066, C. Civ. Proc. 1895; re-en. Sec. 7263, Rev. C. 1907; re-en. Sec. 9881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1149; re-en. Sec. 9881, R.C.M. 1935; R.C.M. 1947, 93-9607; amd. Sec. 481, Ch. 56, L. 2009.

25-14-308. Reapplication for discharge. If the judge does not discharge the prisoner, the prisoner may apply for discharge at the end of every succeeding 10 days in the same manner as provided in this part, and the same proceedings must be had upon the application.

History: En. Sec. 113, p. 48, Cod. Stat. 1871; re-en. Sec. 151, p. 74, L. 1877; re-en. Sec. 151, 1st Div. Rev. Stat. 1879; re-en. Sec. 153, 1st Div. Comp. Stat. 1887; re-en. Sec. 2067, C. Civ. Proc. 1895; re-en. Sec. 7264, Rev. C. 1907; re-en. Sec. 9882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1150; re-en. Sec. 9882, R.C.M. 1935; R.C.M. 1947, 93-9608; amd. Sec. 482, Ch. 56, L. 2009.

25-14-309. Effect of discharge. The prisoner, after being discharged, is forever exempt from arrest or imprisonment for the same debt unless the prisoner is convicted of having willfully sworn falsely upon examination before the judge or in taking the oath prescribed in 25-14-306.

History: **En. Sec. 114, p. 48, Cod. Stat. 1871; re-en. Sec. 152, p. 74, L. 1877; re-en. Sec. 152, 1st Div. Rev. Stat. 1879; re-en. Sec. 154, 1st Div. Comp. Stat. 1887; re-en. Sec. 2068, C. Civ. Proc. 1895; re-en. Sec. 7265, Rev. C. 1907; re-en. Sec. 9883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1151; re-en. Sec. 9883, R.C.M. 1935; R.C.M. 1947, 93-9609; amd. Sec. 483, Ch. 56, L. 2009.**

Cross-References

Execution against person of judgment debtor, 25-13-308.
Procedure when debtor withholding property from execution — arrest, 25-14-102.
False swearing, 45-7-202.

25-14-310. Judgment unaffected. The judgment against a prisoner who is discharged remains in full force against any estate that may then or at any time afterward belong to the prisoner, and the plaintiff may take out a new execution against the goods and estate of the prisoner in the same manner as if the prisoner had never been committed.

History: **En. Sec. 2069, C. Civ. Proc. 1895; re-en. Sec. 7266, Rev. C. 1907; re-en. Sec. 9884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1152; re-en. Sec. 9884, R.C.M. 1935; R.C.M. 1947, 93-9610; amd. Sec. 484, Ch. 56, L. 2009.**

Cross-References

Execution against person of judgment debtor, 25-13-308.
Procedure when debtor withholding property from execution — arrest, 25-14-102.

25-14-311. Discharge at instance of plaintiff. The plaintiff in the action may at any time order the prisoner to be discharged, and the prisoner is not liable to imprisonment for the same cause of action.

History: **En. Sec. 115, p. 48, Cod. Stat. 1871; re-en. Sec. 153, p. 74, L. 1877; re-en. Sec. 153, 1st Div. Rev. Stat. 1879; re-en. Sec. 155, 1st Div. Comp. Stat. 1887; re-en. Sec. 2070, C. Civ. Proc. 1895; re-en. Sec. 7267, Rev. C. 1907; re-en. Sec. 9885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1153; re-en. Sec. 9885, R.C.M. 1935; R.C.M. 1947, 93-9611; amd. Sec. 485, Ch. 56, L. 2009.**

Cross-References

Execution against person of judgment debtor, 25-13-308.
Procedure when debtor withholding property from execution — arrest, 25-14-102.

25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner. Whenever a prisoner is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor or the creditor's agent or attorney shall advance to the jailer, on the commitment, sufficient money for the support of the prisoner for 1 week and shall make the same advance for every successive week of imprisonment, and in case of failure to do so, the jailer shall discharge the prisoner from custody, and the discharge has the same effect as if made by order of the creditor.

History: **En. Sec. 2071, C. Civ. Proc. Sec. 1895; re-en. Sec. 7268, Rev. C. 1907; re-en. Sec. 9886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1154; re-en. Sec. 9886, R.C.M. 1935; R.C.M. 1947, 93-9612; amd. Sec. 486, Ch. 56, L. 2009.**

Cross-References

Execution against person of judgment debtor, 25-13-308.
Procedure when debtor withholding property from execution — arrest, 25-14-102.

CHAPTER 15
LIABILITY OF JOINT DEBTORS

Part 1 — Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served.
25-15-102. Content and service of summons.
25-15-103. Affidavit to accompany summons — new complaint unnecessary.
25-15-104. Answer — time for filing — contents.
25-15-105. What constitute pleadings.
25-15-106. Trial of issues — limit on verdict.

Part 2 — Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor.
25-15-202. Effect of discharge — right of contribution.

Chapter Cross-References

Multiple defendants jointly and severally liable, 27-1-703.

Part 1
Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in Rule 4(s), M.R.Civ.P., those who were not originally served with the summons and did not appear to the action may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

History: En. Sec. 291, p. 104, Bannack Stat.; re-en. Sec. 346, p. 205, L. 1867; re-en. Sec. 420, p. 119, Cod. Stat. 1871; re-en. Sec. 446, p. 161, L. 1877; re-en. Sec. 446, 1st Div. Rev. Stat. 1879; re-en. Sec. 459, 1st Div. Comp. Stat. 1887; re-en. Sec. 1780, C. Civ. Proc. 1895; re-en. Sec. 7129, Rev. C. 1907; re-en. Sec. 9762, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 989; re-en. Sec. 9762, R.C.M. 1935; R.C.M. 1947, 93-8101.

Cross-References

Execution when only some of defendants served, 25-13-303.

25-15-102. Content and service of summons. The summons, as provided in 25-15-101, must describe the judgment and require the person summoned to show cause why the person should not be bound by it and must be served in the same manner and returnable within the same time as the original summons.

History: En. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; R.C.M. 1947, 93-8102(part); amd. Sec. 487, Ch. 56, L. 2009.

25-15-103. Affidavit to accompany summons — new complaint unnecessary. The summons must be accompanied by an affidavit of the plaintiff or the plaintiff's agent, representative, or attorney that the judgment or some part of the judgment remains unsatisfied and must specify the amount due. It is not necessary to file a new complaint.

History: Ap. p. Sec. 293, p. 104, Bannack Stat.; re-en. Sec. 348, p. 205, L. 1867; re-en. Sec. 422, p. 119, Cod. Stat. 1871; re-en. Sec. 448, p. 161, L. 1877; re-en. Sec. 448, 1st Div. Rev. Stat. 1879; re-en. Sec. 461, 1st Div. Comp. Stat. 1887; re-en. Sec. 1782, C. Civ. Proc. 1895; re-en. Sec. 7131, Rev. C. 1907; re-en. Sec. 9764, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 991; re-en. Sec. 9764, R.C.M. 1935; Sec. 93-8103, R.C.M. 1947; Ap. p. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; Sec. 93-8102, R.C.M. 1947; R.C.M. 1947, 93-8102(part), 93-8103; amd. Sec. 488, Ch. 56, L. 2009.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

25-15-104. Answer — time for filing — contents. Upon the summons, the defendant may answer within the time specified in the summons, denying the judgment or setting up any defense that may have arisen subsequently, or the defendant may deny liability on the obligation upon which the judgment was recovered, except a discharge from liability because of the statute of limitations.

History: En. Sec. 294, p. 105, Bannack Stat.; re-en. Sec. 349, p. 205, L. 1867; re-en. Sec. 423, p. 119, Cod. Stat. 1871; re-en. Sec. 449, p. 161, L. 1877; re-en. Sec. 449, 1st Div. Rev. Stat. 1879; re-en. Sec. 462, 1st Div. Comp. Stat. 1887; re-en. Sec. 1783, C. Civ. Proc. 1895; re-en. Sec. 7132, Rev. C. 1907; re-en. Sec. 9765, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 992; re-en. Sec. 9765, R.C.M. 1935; R.C.M. 1947, 93-8104; amd. Sec. 489, Ch. 56, L. 2009.

Cross-References

Statutes of limitations, Title 27, ch. 2.

25-15-105. What constitute pleadings. If the defendant in the answer denies the judgment or provides any defense that may have arisen subsequently, the summons, with the affidavit attached, and the answer constitute the written allegations in the case. If the defendant denies liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit attached, and the answer constitute the written allegations.

History: En. Sec. 295, p. 105, Bannack Stat.; re-en. Sec. 350, p. 205, L. 1867; re-en. Sec. 424, p. 119, Cod. Stat. 1871; re-en. Sec. 450, p. 161, L. 1877; re-en. Sec. 450, 1st Div. Rev. Stat. 1879; re-en. Sec. 463, 1st Div. Comp. Stat. 1887; re-en. Sec. 1784, C. Civ. Proc. 1895; re-en. Sec. 7133, Rev. C. 1907; re-en. Sec. 9766, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 993; re-en. Sec. 9766, R.C.M. 1935; R.C.M. 1947, 93-8105; amd. Sec. 490, Ch. 56, L. 2009.

25-15-106. Trial of issues — limit on verdict. The issues formed may be tried as in other cases. However, when the defendant denies in the answer any liability on the obligation upon which the judgment was rendered, if a verdict is found against the defendant, the judgment may not be in excess of the amount remaining unsatisfied on the original judgment, with interest on that amount.

History: En. Sec. 296, p. 105, Bannack Stat.; re-en. Sec. 351, p. 205, L. 1867; re-en. Sec. 425, p. 119, Cod. Stat. 1871; re-en. Sec. 451, p. 161, L. 1877; re-en. Sec. 451, 1st Div. Rev. Stat. 1879; re-en. Sec. 464, 1st Div. Comp. Stat. 1887; re-en. Sec. 1785, C. Civ. Proc. 1895; re-en. Sec. 7134, Rev. C. 1907; re-en. Sec. 9767, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 994; re-en. Sec. 9767, R.C.M. 1935; R.C.M. 1947, 93-8106; amd. Sec. 491, Ch. 56, L. 2009.

Cross-References

Trials, Title 25, ch. 7.
Amount of interest, 25-9-205.

Part 2
Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor. Any joint debtor, including a partner, may compromise with a creditor, and a discharge to the joint debtor by the creditor is as effectual as if made to all debtors, but the discharge does not relieve the other joint debtors. Any creditor can release a judgment in the creditor's favor against any one or more joint debtors, and the release does not discharge the others.

History: En. Sec. 1786, C. Civ. Proc. 1895; re-en. Sec. 7135, Rev. C. 1907; re-en. Sec. 9768, R.C.M. 1921; re-en. Sec. 9768, R.C.M. 1935; R.C.M. 1947, 93-8107; amd. Sec. 492, Ch. 56, L. 2009.

25-15-202. Effect of discharge — right of contribution. Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of the debtor does not prevent the codebtors from enforcing the right of contribution if they are compelled to pay the whole of the debt.

History: En. Sec. 1787, C. Civ. Proc. 1895; re-en. Sec. 7136, Rev. C. 1907; re-en. Sec. 9769, R.C.M. 1921; re-en. Sec. 9769, R.C.M. 1935; R.C.M. 1947, 93-8108; amd. Sec. 1, Ch. 253, L. 1987; amd. Sec. 493, Ch. 56, L. 2009.

Cross-References

Compelling contribution or repayment — joint debtor — surety, 25-13-104.
Multiple defendants jointly and severally liable — right of contribution, 27-1-703.
Right to contribution from joint debtor, 28-1-303.

CHAPTERS 16 THROUGH 18
RESERVED

CHAPTER 19
UNIFORM DISTRICT COURT RULES

Part 1 — Rules

Rule
1. Form of Papers Presented for Filing.
2. Motions.
3. Ex Parte Matters.
4. Filing of Discovery.
5. Pre-Trial Order and Pre-Trial Conference.
6. Simplified Procedure for Civil Actions.
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11. Judgments and Decrees.
12. Exhibits.
13. Regulation of Attorneys not Admitted to Practice in Montana.
14. Chief District Judge.
15. Local Rules Allowed.
16. Attorney's Copied or Electronically-Generated Signature.
17. Informal Domestic Relations Trials.

Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Part 1
Rules

Rule 1 - Form of Papers Presented for Filing.

(a) Papers Defined. The word "papers" as used in this Rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) Pagination, Printing, Etc. All papers shall be:

(1) Typewritten, printed or equivalent;

(2) Clear and permanent;

(3) Equally legible to printing;

(4) Of type not smaller than pica;

(5) Only on standard quality opaque, unglazed, recycled paper, 8½" x 11" in size.

(6) Printed one side only, except copies of briefs may be printed on both sides. The original brief shall be printed on one side.

(7) Lines unnumbered or numbered consecutively from the top;

(8) Spaced one and one-half or double;

(9) Page numbered consecutively at the bottom; and

(10) Bound firmly at the top. Matters such as property descriptions or direct quotes may be single spaced. Extraneous documents not in the above format and not readily conformable may be filed in their original form and length.

(c) Format. The first page of all papers shall conform to the following:

(1) Commencing at line 1 at the left margin, single spaced, shall be the name of the attorney or party responsible for the pleadings, together with the telephone number and complete mailing address for service of papers.

(2) Lines 1 through 7 of the right one-half of the page shall be left blank for the use of the clerk.

(3) On or below line 8, the title of the court.

(4) Commencing at line 9 or below on the left, the title of the case.

(5) On the right and opposite the title of the case, the case number and identification of the document being filed.

(6) Nonconforming papers may not be filed without leave of the court.

(d) Changes, Conformance of Copies. Additions, deletions or interlineations shall be initialed by the clerk or judge at the time of filing. All copies served shall conform to the original as filed.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. Mar. 25, 1993; amd. Sup. Ct. Ord. Mar. 19, 2008, eff. June 1, 2008; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 2 - Motions.

(a) Prerequisites to Filing a Motion. The text of the motion must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted. When a motion is unopposed, the word "unopposed" must appear in the title of the motion

(b) Filing Briefs in Support of Motions. The moving party shall file with the court a supporting brief upon filing a motion. The brief may be accompanied by appropriate supporting documents. Except as provided in M. R. Civ. P. 56(c), within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within fourteen days after service of the opposing party's answer brief, the movant may file a reply brief or other appropriate responsive documents.

(c) Failure to File Briefs. Failure to file briefs may subject the motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

(d) Oral Argument. The court may order oral argument sua sponte or upon application of a party for good cause shown.

(e) When Motion Deemed Submitted. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above. If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

(f) Subject to subsection (e), above, the moving party shall file a notice with the court within five days after the filing of a reply brief, or if no reply brief is filed, within five days after the filing of all response briefs, advising the court that the matter is fully submitted and ready for decision. A copy of the notice shall be sent to the presiding judge's chambers.

(g) In the event of conflict, the Montana Rules of Civil Procedure shall control. Time computation shall be governed by M. R. Civ. P. 6.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. Mar. 19, 2008, eff. June 1, 2008; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, July 19, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 3 - Ex Parte Matters.

Except as otherwise provided by these Rules or statute, no document, including briefs, proposed orders and proposed judgments, or other communications, may be presented to the court at any time unless it is first filed with the court and served on all parties.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. Mar. 19, 2008, eff. June 1, 2008; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 4 - Filing of Discovery.

(a) Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, and requests for admissions and responses thereto shall not be filed without leave of court. When any motion is filed referring to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

(b) The pre-trial order shall identify all those portions of depositions, interrogatories, requests for admissions and answers and responses thereto that the parties intend to introduce into evidence.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 5 - Pre-Trial Order and Pre-Trial Conference.

(a) Pre-trial. Unless otherwise ordered by the court, a pre-trial conference shall be held in all contested civil cases.

(b) Not later than seven days prior to the pre-trial conference, Plaintiff shall convene a conference of all parties for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

(c) Pre-trial Order. The pre-trial order shall be substantially in the following form:

(TITLE OF COURT AND CAUSE)

Pursuant to Rule 16 of the Montana Rules of Civil Procedure, a pre-trial conference was held in the above-entitled cause on the ____ day of ________, 20__, at ___ o'clock __.m.
____represented the plaintiff(s).
____represented the defendant(s).
____
______________________________________(other appearances) were also present.

AGREED FACTS

The following facts are admitted, agreed to be true, and require no proof:
(Here enumerate all agreed facts, including facts admitted in the pleadings.)

PLAINTIFF'S CONTENTIONS

Plaintiff's contentions are as follows:

1.
2.

DEFENDANT'S CONTENTIONS

1.
2.

EXHIBITS

Attached to the pre-trial order are exhibit lists identifying by number and brief description each exhibit and stating any objections to the exhibits. Any exhibit offered at the trial to which no objection was made in the pre-trial order will be admitted into evidence.

WITNESSES

The following witnesses and no others will (may) be called to testify except on rebuttal:

Plaintiff
1.
2.
Defendant
1.
2.

ISSUES OF FACT

The following issues of fact, and no others, remain to be litigated upon the trial: (Here specify each issue.)

1.
2.

ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)

1.
2.

DISCOVERY

The final pre-trial order shall refer to all those portions of depositions upon oral examination and interrogatories, requests for admissions, and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated, and if not stated, shall be deemed waived. (Because this Rule relates to filing and is designed to consolidate in one place all of the fruits of discovery and because there can be no surprise element involved, the court shall be liberal in permitting the amendment of the pre-trial order to include any material not originally listed.)

ADDITIONAL PRE-TRIAL DISCOVERY

(Here specify any additional discovery contemplated by either party and the time within which such discovery will be completed.)

STIPULATIONS

(Here include any stipulations in addition to the agreed facts set forth above.)

DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL

It was agreed that the following legal issues should be determined by the court in advance of the trial.

(Here specify issues and make provision for filing briefs with respect to such issues.)

ADDITIONAL ISSUES

Additional issues to be determined and/or addressed include:
order of proof where there is a counterclaim;
attorney's fees testimony and/or proof;
time of filing and service of trial briefs and other issues.

JURY SELECTION AND PROCESS

Order and method of selection, stipulation that jury will be selected or drawn, numbering of panel, number of challenges, time to file instructions, length of time on voir dire.

TRIAL

It is estimated that the case will require ___ hours/days for trial.
The case will be tried before the court with (without) a jury.
IT IS HEREBY ORDERED that this pre-trial order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.
IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pretrial order.
DATED this ___ day of ___________, 20__.

District Judge

Approved as to form and content.

Attorney for Plaintiff

Attorney for Defendant

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012.

Rule 6 - Simplified Procedure for Civil Actions.

(a) The purpose of this rule is to protect the right to trial by jury in civil actions; to provide maximum access to the district courts and opportunity for citizens to participate in the civil justice system in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to facilitate limited discovery and decrease expenses; and to provide opportunities for counsel to train in civil trial practice.

(b) This rule applies to all civil actions in which a jury trial has been requested. Attorneys are required to educate and consult with their clients about this Simplified Procedure and all parties shall be prepared to elect or decline the Simplified Procedure process at the initial scheduling conference.

(c) Simplified Procedure means that the action shall be subject to the following requirements and limitations unless otherwise ordered by the court:

(1) Trial Setting. Following issuance of the scheduling order, the court shall set the case for trial on a date certain within six months or as soon as the court's schedule allows. A maximum of three trial days shall be allowed absent leave of court. The parties are not required to attend a settlement conference.

(2) Initial Disclosures. Each party shall produce initial disclosures fourteen days from the date of the Scheduling Order. The disclosing party shall sign all disclosures under oath. The initial disclosures must contain the following information:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) A copy—or a description by category and location of such items that cannot be copied—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under M. R. Civ. P. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(3) Lay Witness Statements. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness (not the party) the party intends to call at trial. For adverse witnesses, written disclosure of the expected subject matters of the witness's testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Subject to the court's Scheduling Order, it is expected Lay Witness Statements will be filed within two months of the court's Scheduling Order.

(4) Expert Witness Reports. Expert testimony shall be disclosed through detailed written reports which may be drafted by counsel but shall be signed by the expert, and shall include the subject areas, bases, list of material relied upon, and specific opinions intended to be offered at trial. Such written expert reports shall be sufficiently detailed that expert depositions are not permitted absent leave of court. Subject to the court's Scheduling Order, it is expected Expert Witness Reports will be filed within three months of the court's Scheduling Order.

(5) Discovery. Interrogatories shall be limited to twenty-five including subparts. Requests for production shall be limited to twenty-five including subparts. Depositions shall be limited to three per party. Subject to the court's Scheduling Order, it is expected discovery will be closed within four months of the court's Scheduling Order.

(6) Discovery Disputes. Discovery disputes shall be resolved through telephonic or in-person hearings with the court. Written discovery motions are not permitted without leave of court.

(7) Pretrial Motions. Motions made pursuant to M. R. Civ. P. 12 or 56 shall not be filed absent leave of court. Motions in limine shall be filed consistent with the court's Scheduling Order.

(d) Changed Circumstances. In a case governed by this Rule, any time prior to trial, on the court's own motion or upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure under this Rule unfair, and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of this Rule and enter such orders as are appropriate under the circumstances.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 7 - Jury Instructions and Verdict Forms.

(a) Submission. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties at the time fixed in the pre-trial order. Subsequently, additional instructions may be allowed to prevent manifest injustice.

(b) Citation of authorities. Each proposed instruction shall identify at the bottom its source and cite supporting authorities, if any.

(c) Form. Each instruction shall be on 8½" x 11" paper and shall, after the citations of authorities, indicate the requesting party and be numbered consecutively. One copy of the instructions filed with the court shall not be firmly bound together.

(d) Request for special findings by jury. Whenever a party desires special findings by a jury that party shall file with the court and serve a copy upon all opposing parties, in writing, the issues or questions of fact upon which such findings are requested, in proper form to submit to the jury.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 8 - Findings and Conclusions.

Unless ordered otherwise, in all matters where the court must enter findings of fact and conclusions of law pursuant to M. R. Civ. P. 52, all parties shall file with the court, and serve upon all opposing parties, at least seven days prior to the scheduled trial or hearing, proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely matter shall be cause for appropriate sanction including removal of the case from the trial calendar, dismissal or granting of a judgment, precluding the offending party from presentation of evidence or objecting to evidence submitted by the other party, or such other action as the court deems appropriate. Post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances upon order of the court.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 9 - Juror Questionnaire.

(a) All jurors are requested to complete a questionnaire in the form on file with the clerk in his/her general order file and which contains basic vital statistics and other pertinent information. The completed forms will only be available to the parties, the attorneys for the parties, judges and court employees. Others requesting the completed forms must file a Request for Privacy Information with the court. The jury questionnaire will be destroyed by the clerk's office within a reasonable length of time after the conclusion of the jury term.

(b) A party may request that the court approve the mailing of a supplemental questionnaire to prospective jurors by submitting a motion, with proposed supplemental questions, at least sixty days in advance of the trial date. Any other party may file a response to the proposed supplemental questions within twenty days, and the moving party may file a reply within five days. The court may approve, modify, or disapprove the proposed supplemental questions in part or in their entirety. If the court approves or modifies the supplemental questions, the requesting party or parties shall pay the costs of mailing the supplemental questionnaire, including the costs of postage, paper, and envelopes.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. Aug. 20, 2008, eff. Aug. 20, 2008; amd. Sup. Ct. Ord. Sept. 10, 2008, eff. Sept. 10, 2008; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 10 - Death or Removal of Attorney.

(a) Whenever an attorney representing a party to an action, or in another civil proceeding of any kind, is removed, withdraws, or ceases to act as such, the attorney must inform the court and all other parties of the full name and address of the attorney's client and any other information which the court may find appropriate to assist in contacting the party.

(b) Except as allowed or modified by the limited scope of representation rules, when the attorney representing a party to an action or proceeding dies, is removed, withdraws, or ceases to act as such, that party, before any further proceedings are had against the party must be given notice by any opposing party:

(1) That the party must appoint another attorney or appear in person;

(2) The date of the trial or of the next hearing or action required in the case; and

(3) That if the party fails to appoint an attorney or appear in person by a date certain, which may not be less than twenty-one days from the date of the notice, the action or other proceeding will proceed and may result in a judgment or other order being entered against him/her, by default or otherwise.

(c) Notice may be by personal service or by certified mail to the party's last known address.

(d) If the party does not appoint another attorney or appear in person within twenty-one days of the service or mailing of the notice, the action may proceed to judgment. However, copies of all papers and documents required to be served by these Rules and the Rules of Civil Procedure shall be mailed to the party at the party's last known address.

(e) In addition to the foregoing requirements of this Rule and before any change or substitution of attorney is effective, regardless of the reason for such change or substitution, the requirements of sections 37-61-403, 37-61-404 and 37-61-405, MCA, shall have been fully satisfied.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.

Rule 11 - Judgments and Decrees.

Whenever a judgment or decree is signed by the presiding judge it shall be delivered to the clerk and immediately filed in the records of the court and the fee required by law shall be paid to the clerk. Failure of parties to observe this Rule shall be deemed a contempt of court.

History: **En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.**

Rule 12 - Exhibits.

(a) Every exhibit placed on file or offered in evidence shall be held in the custody of the clerk. Unless there is good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

(b) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, the clerk may apply to the court for an order to dispose of exhibits, and shall notify the parties of the application. Twenty-one days after mailing of the notice the court may enter its order authorizing the clerk to dispose of exhibits.

History: **En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.**

Rule 13 - Regulation of Attorneys not Admitted to Practice in Montana.

An attorney seeking to be admitted to practice before the court on a particular case, who is not admitted to the Bar of Montana, and who is authorized to practice law in the highest courts of another state, must at the time of his or her first appearance in a district court in Montana, or within fourteen days, and before any further proceedings in the matter, join with an attorney who is admitted to practice in Montana and who is a resident of Montana.

In order to hold secure the just, speedy and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary and legal information necessary to act on behalf of the party and must also be vested with full and complete authority to act on behalf of and bind the party in all matters connected with the litigation.

A failure of local counsel to take any action required by the Rules of Civil Procedure or these Rules by lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

History: **En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011, eff. March 1, 2012; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.**

Rule 14 - Chief District Judge.

(a) In a multijudge district court of Montana, a chief district judge shall be selected at the beginning of each calendar year, and the position shall rotate among the judges of the district annually, unless they agree otherwise. The rotation shall commence with the most senior district judge.

(b) The duties of the chief district judge shall be to provide for the efficient management of the district court business, in cooperation with the other judges of the district.

History: **En. Sup. Ct. Ord. Jan. 30, 1996, eff. Jan. 30, 1996; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.**

Rule 15 - Local Rules Allowed. Nothing in these Rules shall be construed as limiting the power of the district courts from promulgating rules that do not conflict with these Rules.

History: **En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987; redes. Sup. Ct. Ord. Jan. 30, 1996, eff. Jan. 30, 1996; amd. Sup. Ct. Ord. No. AF 07-0110, March 15, 2011, eff. Oct. 1, 2011.**

Rule 16 - Attorney's Copied or Electronically-Generated Signature.

(a) An attorney's copied or electronically-generated signature shall be deemed original for all court-filed documents.

(b) Pursuant to M. R. Civ. P. 5(b)(E), some or all of the parties may stipulate to provide service of all papers required to be served under M. R. Civ. P. 5(a)(1) by electronic means, including papers provided in response to written discovery requests. All parties that choose to accept service by electronic means shall sign a stipulation to be filed with the Court. Any party that chooses not to stipulate to service by electronic means must be served by one of the other methods identified in M. R. Civ. P. 5(b).

History: **En. Sup. Ct. Ord. No. AF 07-0110, Sept. 16, 2014, eff. Sept. 16, 2014; amd. Sup. Ct. Ord. No. AF 07-0110, Oct. 29, 2019, eff. Jan. 1, 2020.**

Rule 17 - Informal Domestic Relations Trials.

(a) Unless one or both parties objects or the court orders otherwise, in every original or modification action for dissolution of marriage, parenting and visitation, child and medical support, declaration of invalidity of marriage, paternity, separation, grandparent-grandchild contact, or orders of protection brought under MCA Title 40, including interim proceedings, in which at least one party is self-represented, the issues will be resolved through an informal domestic relations trial before a judge or standing master as provided in this Rule. If both parties are represented by counsel and wish to use the informal process provided in this Rule, the court in its discretion may allow the informal proceeding upon stipulation in the record.

(b) The court must explain the informal domestic relations trial process and advise the parties of their right not to consent. The court may include in the case scheduling order a deadline for parties to opt out of the process. A party's decision to opt out must be stated on the record or in a signed filing with the court.

(c) The court may refuse to allow the parties to utilize the informal domestic relations trial process at any time and may direct that a case proceed in the traditional manner.

(d) The court may allow a party to withdraw from an informal domestic relations trial election as long as the other party is not prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause.

(e) During an informal domestic relations trial, parties may present any evidence they believe is relevant. The court may admit any evidence a party offers, even if this evidence might be inadmissible under formal rules of evidence, and may determine how much weight to give any evidence. The traditional format used to question witnesses at trial does not apply. In many cases, the parties will be the only witnesses. The parties may call other witnesses in the discretion of the court. The court may question the parties and any other witnesses, and the parties may suggest additional topics or questions.

(f) Any evidence offered during an informal domestic relations trial initiated under this Rule is not admissible in any other proceeding unless the court in the other proceeding determines the evidence meets the applicable rules of evidence.

(g) If an informal domestic relations trial converts to a formal proceeding, the court will determine the admissibility of evidence previously offered in the informal proceeding. The court may not rely on any evidence in a formal proceeding that is not admissible under the applicable rules of evidence.

(h) The court will allow each party an opportunity to file any objections or motions on the admissibility or use of any evidence offered in an informal domestic relations trial before relying on that evidence in a formal proceeding.

(i) An informal domestic relations trial will proceed as follows:

(1) At the beginning of an informal domestic relations trial, the court will ask the parties to affirm that they understand the rules and procedures of the informal domestic relations trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the informal domestic relations trial.

(2) The court may ask the parties or their lawyers for a brief summary of the issues.

(3) The court will allow the moving party to speak to the court under oath concerning all issues in dispute. The party is not questioned by the other party or any lawyers, but the court may question the party to develop evidence required by any statute or rule or necessary in the court's discretion to address the matters at issue.

(4) The parties will not be subject to cross-examination. However, the court will ask the nonmoving party or their lawyer whether there are any other areas the party wishes the court to inquire about. The court will inquire into these areas if requested and if relevant to an issue to be decided by the court.

(5) The process in subsections (i)(3) and (i)(4) is then repeated for the other party.

(6) Expert reports will be received as exhibits. Upon the request of the court or either party, the expert will be sworn in and subjected to questioning by the parties, their lawyers, or the court.

(7) The court may receive any exhibits offered by the parties which are capable of being made a part of the record of the case. The court will determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented.

(8) The court will allow the parties or their lawyers to respond briefly to the statements of the other party.

(9) The court will offer each party or the party's lawyer the opportunity to make a closing statement.

(10) At the conclusion of the case, the court will render judgment. The court may take the matter under advisement, but it will make its best efforts to issue prompt judgments.

(11) The court may modify these procedures as justice and fundamental fairness requires.

(j) A case proceeding as an informal domestic relations trial will be subject to the same pretrial procedures and orders of the court that apply to traditional cases. Parties seeking a dissolution proceeding under informal domestic relations trials are subject to the mandatory disclosure requirements of MCA § 40-4-252.

(k) The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

History: En. Sup. Ct. Ord. No. AF 07-0110, Aug. 30, 2023, eff. Oct. 30, 2023.

CHAPTER 20
RULES OF CIVIL PROCEDURE

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Chapter Compiler's Comments
Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

I. Scope of Rules; Form of Action

Rule 1. Scope of Rules.

These rules govern the procedure in all civil actions and proceedings in the district courts of the state of Montana, including probate proceedings, unless specifically provided to the contrary in the Uniform Probate Code; and except as stated in Rule 81. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 2. One form of Action. There is one form of action — the civil action.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

II. Commencing an Action; Service of Process, Pleadings, Motions, and Orders

Rule 3. Commencing an Action.

A civil action is commenced by filing a complaint with the court.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 4. Persons Subject to Jurisdiction; Process; Service.

(a) Definition of Person. As used in this rule, the word "person," whether or not a citizen of this state, a resident of this state, or organized under the laws of this state, includes:

(1) an individual, whether operating in the individual's own name or under a trade name;
(2) an individual's agent or personal representative;
(3) a corporation;
(4) a limited liability company;
(5) a business trust;
(6) an estate;
(7) a trust;
(8) a partnership;
(9) an unincorporated association;
(10) any two or more persons having a joint or common interest or any other legal or commercial entity; and
(11) any other organization given legal status as such under the laws of this state.

(b) Jurisdiction of Persons.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of any of the following acts:

(A) the transaction of any business within Montana;
(B) the commission of any act resulting in accrual within Montana of a tort action;
(C) the ownership, use, or possession of any property, or of any interest therein, situated within Montana;
(D) contracting to insure any person, property, or risk located within Montana at the time of contracting;
(E) entering into a contract for services to be rendered or for materials to be furnished in Montana by such person;
(F) acting as director, manager, trustee, or other officer of a corporation organized under the laws of, or having its principal place of business within, Montana; or
(G) acting as personal representative of any estate within Montana.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by Montana courts over any person:

(A) through service of process as herein provided; or

(B) by the voluntary appearance in an action by any person either personally or through an attorney, authorized officer, agent, or employee.

(c) Summons.

(1) Issuance. On or after filing the complaint, the plaintiff or the plaintiff's attorney must present a summons to the clerk for issuance. The clerk must issue and deliver a properly completed summons to the plaintiff or the plaintiff's attorney, who must thereafter deliver it for service upon the defendant as prescribed by these rules. Service of the summons must be accomplished within the times prescribed by Rule 4(t). Upon request, the clerk must issue separate or additional summons against any parties designated in the original action or any additional parties who may be brought into the action. Such separate or additional summons must also be served in the manner and within the times prescribed by these rules. The party requesting issuance of the summons bears the burden of having it properly issued, served, and filed with the clerk.

(2) Form.

(A) Contents. A summons must:

(i) name the court and the parties;

(ii) be directed to the defendant;

(iii) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(iv) state the time within which the defendant must appear and defend;

(v) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(vi) be signed by the clerk; and

(vii) bear the court's seal.

(B) Quiet Title Actions. In an action to quiet title to real estate, the following must be added to the summons: "This action is brought to quiet title to land situated in ____________ County, Montana, and described as follows: [Here insert descriptions of land]."

(C) Statutory Exceptions. Whenever a Montana statute, or a court order or citation issued pursuant thereto, provides for the service of a notice, order, or citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute, order, or citation. Additionally, all persons are required to comply with the provisions of the following sections, when applicable:

(i) 33-1-603 (service on an insurer through the commissioner of insurance);

(ii) 33-1-613 (service on unauthorized insurer doing business in Montana);

(iii) 33-1-614 (exemptions from service of process for certain insurers);

(iv) 33-2-314 (where to bring suit against an insurer);

(v) 33-2-315 (when the commissioner of insurance is appointed agent for service of process);

(vi) 70-28-207 (how summons must read in a suit to quiet title to property granted to an heir of a deceased entryman);

(vii) 70-28-208 (publication and posting of summons in a suit to quiet title to property granted to an heir of a deceased entryman);

(viii) 70-28-209 (personal service of summons — service by mail in a suit to quiet title to property granted to an heir of a deceased entryman); and

(ix) 70-28-212 (time for the defendant to appear and answer in a suit to quiet title to property granted to an heir of a deceased entryman).

(D) By Publication. When service by publication is permitted pursuant to Rule 4(o), the published summons must also include a statement in general terms of the nature of the action. When the action is one in which the title to, or any interest in or lien upon, real property is involved, affected, or brought into question, the published summons must also contain a description of the real property and a statement of the object of the action.

(d) Service.

(1) In General. The summons and complaint must be served together. The plaintiff must furnish the necessary copies to the person who makes service.

(2) In Person. Service of all process may be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(3) (A) By Mail. A summons and complaint may also be served by mailing via first class mail, postage prepaid, the following to the person to be served:

(i) a copy of the summons and complaint;

(ii) two copies of a notice and acknowledgment conforming substantially to form 18-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) A summons and complaint may not be served by mail to the following:

(i) A minor;

(ii) An incompetent person; or

(iii) A corporation, partnership, or other unincorporated association, whether domestic or foreign.

(C) If no acknowledgment of service by mail is received by the sender within 21 days after the date of mailing, service of the summons and complaint must be made in person.

(D) If a person served by mail does not complete and return the notice and acknowledgment within 21 days, the court must order that person to pay the costs of personal service unless good cause is shown for not doing so.

(E) The notice and acknowledgment must be signed and dated by the defendant, and service of summons and complaint will be deemed complete on the date shown.

(e) Serving an Individual. An individual — other than a minor or an incompetent person — must be served by either:

(1) delivering a copy of the summons and complaint to the individual personally; or

(2) delivering a copy of the summons and complaint to an agent authorized by appointment or law to receive service of process. If the agent is one designated by statute to receive service, such further notice as the statute requires must be given.

(f) Serving a Minor over the Age of 14 Years. A minor over the age of 14 years must be served by either:

(1) delivering a copy of the summons and complaint to the minor personally and leaving a copy thereof at the minor's usual place of abode with some adult of suitable discretion also residing therein; or

(2) delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(g) Serving a Minor under the Age of 14 Years. A minor under the age of 14 years may be served by delivering a copy of the summons and complaint to the minor's guardian within Montana. If the minor does not have a guardian within Montana, service of process must be delivered to any of the following:

(1) the minor's father;

(2) the minor's mother;

(3) another person or agency having the minor's care, control, or with whom the minor resides; or

(4) another person or agency as provided by court order.

(h) Serving an Incompetent Person.

(1) An incompetent person who has been adjudged of unsound mind by a Montana court or for whom a guardian has been appointed in Montana by reason of incompetency may be served by delivering a copy of the summons and complaint to the person's guardian, if such guardian resides in Montana, was appointed under Montana law, and is acting under Montana law. If there be no such guardian, the court must appoint a guardian ad litem for the incompetent person.

(2) When a party is alleged to be of unsound mind, but has not been so adjudged by a Montana court, process may be served personally upon that party.

(3) The court may also stay any action pending against a person on learning that such person is of unsound mind.

(i) Serving a Business or Nonprofit Entity.

(1) For the purposes of this Rule, a business or nonprofit entity includes the following:

(A) a corporation;

(B) a limited liability company;
(C) a partnership;
(D) any other unincorporated association; and
(E) any business entity that has filed with the office of the secretary of state.

(2) Service is available under this rule for a domestic business or nonprofit entity, as well as a foreign business or nonprofit entity that either:
(A) has a place of business in Montana;
(B) does business in Montana permanently or temporarily; or
(C) was doing business in Montana permanently or temporarily at the time the claim for relief accrued.

(3) A business or nonprofit entity must be served by either:
(A) delivering a copy of the summons and complaint to:
(i) an officer;
(ii) a director;
(iii) a manager;
(iv) a member of a member-managed limited liability company;
(v) a superintendent;
(vi) a managing agent;
(vii) a general agent; or
(viii) a partner;
(B) leaving copies of the summons and complaint at the office or place of business within Montana with the person in charge of such office;
(C) delivering a copy of the summons and complaint to the registered agent named on the records of the secretary of state;
(D) delivering a copy of the summons and complaint to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the business or nonprofit entity, provided that if the agent or attorney in fact is designated by statute to receive service, further notice as required by the statute must also be given; or
(E) if the suit is against a business or nonprofit entity whose charter or right to do business in Montana has expired or been forfeited, by delivering a copy of the summons and complaint to its trustees or stockholders or members.

(j) Serving a Corporation or Limited Liability Company When Persons Designated Under Rule 4(i) Cannot Be Found Within Montana.

(1) This Rule applies when none of the persons designated in Rule 4(i) can be found within Montana with the exercise of due diligence, and a claim for relief is pending in any Montana court against the following:
(A) a corporation or limited liability company that has filed a copy of its charter in the office of the Montana secretary of state and is qualified to do business in Montana;
(B) a corporation or limited liability company which is subject to the jurisdiction of Montana courts under Rule 4(b), even though it has never qualified to do business in Montana; or
(C) a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana.

(2) The party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any person designated under Rule 4(i).

(3) If, after exercising reasonable diligence, the party causing summons to be issued is unable to accomplish service, the following must be filed with the clerk of the court in which the claim for relief is pending:
(A) an affidavit reciting that none of the persons designated in Rule 4(i) can be found within Montana, as well as a recitation of either:
(i) the last known address of any person designated under Rule 4(i); or
(ii) a statement that no address for any person designated under Rule 4(i) could be found after the exercise of reasonable diligence; and
(B) $20 deposited with the clerk to be paid to the secretary of state as a fee for each defendant for whom the secretary of state is to receive service. When service is requested at more than one address, an additional $20 must be paid for each party to be served at each additional address.

(4) An affidavit filed pursuant to Rule 4(j)(3)(A) reciting that diligent inquiry was made is sufficient evidence of the diligence of inquiry. The affidavit need not detail the facts constituting such inquiry. The affidavit may also be combined in the same instrument with the affidavit required under Rules 4(o)(3)(A)(ii) and 4(p), should an affidavit under these Rules be required.

(5) Upon receiving the necessary affidavit and fees as required under Rule 4(j)(3), the clerk of court must:

(A) issue an order directing process to be served upon the Montana secretary of state or, in the secretary of state's absence, upon the Montana deputy secretary of state; and

(B) mail to the secretary of state at the office of the secretary of state:

(i) the original summons;

(ii) one copy of the summons and affidavit for the files of the secretary of state;

(iii) one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state; and

(iv) the fee for service.

(6) (A) Upon receiving the materials required under Rule 4(j)(5)(B), the secretary of state must mail a copy of the summons and complaint by certified mail, return receipt requested, either:

(i) to the last known address of any of the persons designated in Rule 4(i); or

(ii) if the corporation or liability company is not organized in Montana and no address for a person designated under Rule 4(i) is known, to the secretary of state of the state in which the corporation or limited liability company was originally incorporated, if known.

(B) The secretary of state must also make a return as provided in Rule 4(p).

(7) Service made in accordance with this Rule is deemed personal service on the corporation or limited liability company and the secretary of state, or a deputy in the absence of the secretary of state, is thereby appointed agent of the corporation or limited liability company for service of process.

(8) (A) If a person designated in Rule 4(i) is located and served personally as provided by this Rule, service is deemed complete upon the corporation or limited liability company regardless of the receipt of any return receipt or advice by the postal authority of refusal of the addressee to receive the process mailed.

(B) If a person designated in Rule 4(i) is not located or served personally as provided by this Rule, service by publication must also be made as provided in Rules 4(c)(2)(D) and 4(o)(4). Such publication must first be made within 60 days from the date the original summons is mailed to the secretary of state. If such first publication is not made, the action shall be deemed dismissed as to any corporation or limited liability company intended to be served by such publication. Service by publication in accordance with this Rule is complete upon the date of the last publication of summons.

(9) When service of process is made in accordance with this Rule, and there is no appearance thereafter made by any attorney for such corporation or limited liability company, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(k) Serving a Local Government Entity.

(1) For purposes of this Rule, a local government entity includes the following:

(A) a city;

(B) a village;

(C) a town;

(D) a school district;

(E) a county; or

(F) a public agency or board of any such entity.

(2) A local government entity must be served by delivering a copy of the summons and complaint to any of the following:

(A) a commissioner;

(B) a trustee;

(C) a board member;

(D) a mayor; or

(E) a head of the legislative department thereof. Whenever an officer or employee of the local government entity is sued in an individual capacity for an act or omission occurring in connection with duties performed on the local government entity's behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the local government entity and also serve the officer or employee under Rules 4(e), 4(f), 4(g), 4(h), or 4(n).

(l) Serving the State. The state, as well as any state board or agency, must be served by delivering a copy of the summons and complaint to the attorney general and any other party prescribed by statute. Whenever an officer or employee of the state is sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the state and also serve the officer or employee under Rules 4(e), 4(f), 4(g), 4(h), or 4(n).

(m) Serving an Estate or Trust.

(1) An estate must be served by delivering a copy of the summons and complaint to the personal representative.

(2) A trust must be served by delivering a copy of the summons and complaint to any of the trustees.

(n) Personal Service outside Montana.

(1) When a person cannot, with due diligence, be served personally within Montana, service may be made outside Montana in the manner provided for service within Montana. Such service has the same force and effect as though it had been made within Montana.

(2) Where service by publication is permitted, personal service of the summons and complaint upon the defendant outside Montana is equivalent to and dispenses with the procedures, publication, and mailing provided for in Rules 4(o)(3), 4(o)(4), and 4(o)(5).

(o) Service by Publication.

(1) When Permitted. A defendant who has not been served under the foregoing sections of Rule 4 can only be served by publication in the following situations:

(A) when the subject of the action is real or personal property in Montana in which the defendant has or claims an actual or contingent lien or interest, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein;

(B) when the action is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real or personal property within Montana;

(C) when the action is for dissolution, legal separation or a declaration of invalidity of a marriage of a Montana resident, for modification of a decree of dissolution, or for an order on custody, visitation, support, or a parenting plan granted by a Montana court; or

(D) when the defendant has property within Montana which has been attached or has a debtor within Montana who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under Rules 4(o)(1)(A), 4(o)(1)(B), or 4(o)(1)(C).

(2) Effect of Service by Publication. When a defendant has been served by publication as provided in this Rule, any Montana court having jurisdiction may render a decree adjudicating any interest of such defendant in the status, property, or thing acted upon. Such a decree does not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(3) Filing of Pleading and Affidavit for Service by Publication; Order for Publication.

(A) Before service of the summons by publication is authorized, the following must be filed with the clerk of the district court of the county in which the action is commenced:

(i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in Rule 4(o)(1); and

(ii) (a) in situations defined in Rules 4(o)(1)(A), 4(o)(1)(B), and 4(o)(1)(C), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that either:

1. such defendant resides out of Montana;
2. such defendant has departed from Montana;
3. such defendant cannot, after due diligence, be found within Montana;
4. such defendant conceals the defendant's person to avoid the service of summons;

5. the defendant is a business or nonprofit entity as defined in Rule 4(i)(1) of which none of the persons in Rule 4(i) can, after due diligence, be found within Montana; or

6. the defendant is an unknown claimant and the affiant has made diligent search and inquiry for all persons who claim or might claim any present or contingent right, title, estate, interest in, lien, or encumbrance upon such property or any part thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, including any right of inchoate or accrued dower, and that the affiant has specifically named as defendants in such action all such persons whose names can be ascertained.

(b) Such affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if it recites the fact that diligent inquiry was made. The facts constituting such inquiry need not be detailed.

(c) Such affidavit may be with the affidavit required under Rules 4(j)(3)(A) and 4(p), should an affidavit under these Rules be required.

(iii) In the situation defined in Rule 4(o)(1)(D), proof that a valid attachment or garnishment has been effected must first be presented to the court.

(B) Upon complying herewith, the plaintiff must obtain an order, issued either by the judge or clerk of court, for the service of summons to be made upon the defendants by publication.

(4) Number of Publications. Service by publication must be made by publishing the summons once a week for three successive weeks in a newspaper published in the county in which the action is pending or, if no newspaper is published in such county, then in a newspaper published in an adjoining county that has a general circulation therein.

(5) Mailing Summons and Complaint. A copy of the summons and complaint, at any time after the filing of the affidavit for publication but not later than 14 days after the first publication of the summons, must be mailed, postage prepaid, to the defendant at defendant's place of residence, unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a business or nonprofit entity as defined in Rule 4(i)(1), and personal service cannot with due diligence be effected within Montana on any of the persons designated in Rule 4(i), then the secretary of state must be served pursuant to Rule 4(j).

(6) Time When First Publication or Service outside Montana Must Be Made. The first publication of summons or personal service of the summons and complaint upon the defendant out of Montana must be made within 60 days after the filing of the affidavit for publication. If not, the action must be dismissed as to any party intended to be served by such publication.

(7) When Service by Publication or Outside Montana Complete. Service by publication is complete on the date of the last publication of the summons or, in case of personal service of the summons and complaint upon the defendant out of Montana, on the date of such service.

(p) Serving the Secretary of State.

(1) Whenever service is to be made as provided in Rules 4(i) and 4(o)(5), the requirements of Rule 4(i) must be met.

(2) In all other cases, unless otherwise provided by statute, whenever the Montana secretary of state has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney must file with the clerk of court in which the claim for relief is pending the following:

(A) an affidavit stating the facts showing that the secretary of state is such agent, as well as the residence and last known address of the person to be served;

(B) sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state; and

(C) $20 to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service. Where service is requested at more than one address, an additional $20 must be paid for each party to be served at each additional address.

(3) Upon receipt of the materials specified in Rule 4(p)(2), the clerk must forward to the secretary of state the following:

(A) the original summons;

(B) a copy of both the summons and the affidavit for the files of the secretary of state;

(C) a copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state; and

(D) the fee.

(4) Such service on the secretary of state is sufficient personal service upon the person to be served provided that either:

(A) notice of such service, a copy of the summons, and a copy of the complaint are sent from the secretary of state or a deputy to the party to be served at the party's last known address by registered or certified mail, marked "Deliver to Addressee Only" and "Return Receipt Requested." Either such return receipt purportedly signed by the addressee must be received by the secretary of state, or the postal authority must advise the secretary of state that delivery of the registered or certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4(i). The date upon which the secretary of state receives either the return receipt or the advice of the postal authority is deemed the date of service; or

(B) the secretary of state, or a deputy, may cause a copy of the summons and complaint to be served by any qualified law enforcement officer in accordance with the applicable procedure from Rules 4(e)-(n).

(5) The secretary of state or a deputy must make an original and two copies of an affidavit reciting the following:

(A) the fact of service upon the secretary of state by the clerk of court, including the day and hour of such service;

(B) the fact of mailing a copy of the summons, complaint, and notice to the defendant, including the day and hour thereof, except in those cases where such mailing is excused under Rule 4(i), in which cases the affidavit must so recite; and

(C) the fact of receipt of a return from the postal department, including the date and hour thereof. A copy of such return must be attached to the affidavit.

(6) The secretary of state, or a deputy, must then transmit to the clerk of court the following, which the clerk must file in the claim for relief:

(A) the original summons;

(B) the original affidavit; and

(C) a copy of the notice to the defendant, when such notice was required.

(7) The secretary of state or a deputy must also transmit to the plaintiff's attorney a copy of the secretary of state's or deputy's affidavit, along with a copy of the notice to the defendant where such notice was required.

(8) The secretary of state must keep on file in the secretary of state's office copies of the following:

(A) the summons;

(B) the affidavit served on the secretary of state by the clerk of court; and

(C) a copy of the affidavit executed and issued by the secretary of state or a deputy.

(9) Continuance to Allow Defense. In any of the cases provided for in either this Rule or Rule 4(i), the court in which the claim for relief is pending may order any continuance necessary to afford a reasonable opportunity to defend the action.

(q) Amendment. Upon such notice and terms as it deems just, the court in its discretion may allow any process or proof of service thereof to be amended at any time, unless it appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(r) Proof of Service.

(1) Proving service of the summons and the complaint or notice accompanying the same, if any, must be accomplished as follows:

(A) if by the sheriff or other officer, the sheriff's or other officer's certificate including the time, date, and place of service;

(B) if by any other person, that person's affidavit;

(C) if by publication, an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if deposited; or

(D) the written admission of the defendant showing the date and place of service.

(2) If service is made under Rule 4(d)(3), the sender must file with the court the acknowledgment received.

(3) Failure to make proof of service does not affect the validity of service.

(4) The required affidavit of service must state the time, date, place, and manner of service. When service is by a person other than the sheriff or person designated by law, the affidavit must also state that the person serving is of legal age and knew the person served to be the person named in the papers served and the person intended to be served.

(s) Procedure Where Not All Defendants Served.

(1) If the summons is served on one or more, but not all, defendants, plaintiff may proceed to trial and judgment against the served defendant(s).

(2) At any time thereafter, plaintiff may serve summons to cause the unserved defendant(s) to appear to show cause why the unserved defendant(s) should not be made a party to such judgment. The court must then hear and determine the matter in the same manner as if the unserved defendant(s) had been originally brought into court. The unserved defendant(s) must also be allowed the benefit of any payment or satisfaction made on the recovered judgment.

(t) Time Limit for Issuance and Service of Process.

(1) A plaintiff must accomplish service within three years after filing a complaint. Absent an appearance by defendant(s), the court, upon motion or on its own initiative, must dismiss an action without prejudice if the plaintiff fails to do so.

(2) A plaintiff who names a fictitious defendant in the complaint pursuant to section 25-5-103 may, within three years of filing the original complaint, amend the complaint to substitute a real defendant for the fictitious defendant. The three-year time period set forth in Rule 4(t)(1) begins to run as to the newly identified defendant from the date of the filing of the original complaint.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, December 14, 2016, eff. July 1, 2017.

Rule 4.1. Limited Representation Permitted — Process.

(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).

(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance, except to the extent that a limited notice of appearance as provided for under Rule 4.2 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders.

(d) The attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 4.2. Notice of Limited Appearance and Withdrawal as Attorney.

(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.

(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 5. Serving and Filing Pleadings and other Papers.

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) An order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;
(D) a written motion and any supporting brief, except one that may be heard ex parte;
(E) a written notice, appearance, demand, or offer of judgment, or any similar paper; and
(F) briefs, supporting appendices, and supporting affidavits.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party in the manner provided for service under Rule 4.

(3) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:
(A) handing it to the person;
(B) leaving it:
(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
(C) mailing it to the person's last known address — in which event service is complete upon mailing;
(D) leaving it with the court clerk if the person has no known address;
(E) sending it by electronic means if the person consented in writing — in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or
(F) delivering it by any other means that the person consented to in writing — in which event service is complete when the person making service delivers it to the party or agency designated to make delivery.

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:
(A) defendants' pleadings and replies to them need not be served on other defendants;
(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and
(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) Required Filings; Certificate of Service. Any paper after the complaint that is required to be served — together with a certificate of service — must be filed within a reasonable time after service. But the following discovery requests and responses must not be filed until they are used in the proceeding, ordered by the court in the Rule 16 conference, or the court orders filing: depositions or notices thereof, interrogatories, requests for documents or tangible things or to permit entry onto land, requests for admission, expert disclosure reports, and interrogatory answers.

(2) How Filing Is Made — In General. A paper is filed by delivering it:
(A) to the clerk; or
(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing, Signing, or Verification. A court may, by local rule, allow papers to be filed, signed, or verified by electronic means, including facsimile, that are consistent with any technical standards established by the court or local rule. A paper filed by electronic means in compliance with a local rule is a written paper for purposes of these rules.

(4) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 5.1. Constitutional Challenge to a Statute — Notice and Intervention.

(a) Notice by a Party. A party that files a pleading, written motion, or other paper challenging the constitutionality of a state statute must promptly file a notice of constitutional question stating the question and identifying the paper that raises it, and serve the notice and paper on the state attorney general either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(c) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 5.2. Privacy Protection for Filings Made With the Court.

(a) Redacted Filings. Unless the court orders or the law requires otherwise, in any filing with the court that contains an individual's social security number, taxpayer identification number, or birth date, or a financial account number, a party or nonparty making the filing must include only:

(1) the last four digits of the social security number or taxpayer identification number;

(2) the year of the individual's birth; and

(3) the last four digits of the financial account number.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; and

(4) a filing covered by Rule 5.2(c).

(c) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information;

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court; or

(3) provide other guidance regarding privacy and access consistent with the Rules for Privacy and Public Access to Court Records in Montana.

(e) Option for Additional Unredacted Filing under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Non-conforming Documents.

(1) Waiver. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

(2) Sanctions. If a party fails to comply with this rule, the court on motion of another party or its own motion may order the pleading or other document to be reformed. If the order is not obeyed, the court may order the document stricken.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 6. Computing and Extending Time; Time for Motion Papers.

(a) Computing Time. The following rules apply in computing any time period specified in these rules, or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal Holiday" Defined. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King, Jr. Day, Lincoln's and Washington's Birthdays, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, or state general election day;

(B) any day declared a holiday by the President of the United States or by the Governor of this state; and

(C) for periods that are measured after an event, any other day declared a holiday by the state.

(b) Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) Exceptions. The court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) Motions, Notices of Hearing, and Affidavits.

(1) In General. A written motion and notice of the hearing must be served at least 14 days before the time specified for any hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order — which a party may, for good cause, apply for ex parte — sets a different time.

(2) Supporting Affidavit. Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) Additional Time after Certain Kinds of Service. When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), or (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

History: **En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.**

III. Pleadings and Motions

Rule 7. Pleadings Allowed; Form of Motions and Other Papers.

(a) Pleadings. Only these pleadings are allowed:
(1) a complaint;
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party complaint; and
(7) if the court orders one, a reply to an answer.
(b) Motions and Other Papers.
(1) In General. A request for a court order must be made by motion. The motion must:
(A) be in writing unless made during a hearing or trial;
(B) state with particularity the grounds for seeking the order; and
(C) state the relief sought.
(2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

History: **En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.**

Rule 7.1. Disclosure Statement.

(a) Who Must File; Contents. A nongovernmental corporate party must file and serve a disclosure statement that:
(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
(2) states that there is no such corporation.
(b) Time to File; Supplemental Filing. A party must:
(1) file and serve the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
(2) promptly file and serve a supplemental statement if any required information changes.

History: **En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.**

Rule 8. General Rules of Pleading.

(a) Claim for Relief. A pleading which states a claim for relief must contain:
(1) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(2) a demand for the relief sought, which may include relief in the alternative or different types of relief.
(b) Defenses; Admissions and Denials.
(1) In General. In responding to a pleading, a party must:
(A) state in short and plain terms its defenses to each claim asserted against it; and
(B) admit or deny the allegations asserted by an opposing party.
(2) Denials — Responding to the Substance. A denial must fairly respond to the substance of the allegation.
(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense including, but not limited to:

- accord and satisfaction;
- action on advice of counsel;
- arbitration and award;
- assumption of risk;
- comparative negligence;
- discharge in bankruptcy;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 9. Pleading Special Matters.

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. A pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 10. Form of Pleadings.

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 11. Signing Pleadings, Motions, and other Papers; Representations to the Court; Sanctions.

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, email address, and telephone number, if any. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(e) Limited Scope Representation. An attorney may help to draft a pleading, motion, or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing.

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint, unless the court orders otherwise under Rule 4(c)(2)(C).

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) State of Montana and Its Agencies, Officers, or Employees Sued in an Official Capacity. The State of Montana, a state agency, or a state officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the attorney general.

(3) State Officers or Employees Sued in an Individual Capacity. A state officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the officer or employee or service on the attorney general, whichever is later.

(4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion. If a court grants a motion made under subsection (3), any other defenses presented must be decided by the court in the proper venue, and not by the court in which the action is commenced.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) Result of Presenting Matters outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule;

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course; or

(iii) for the defense of improper venue, show good cause within 21 days of an event providing reason to believe that an impartial trial cannot be had in the county in which the action is commenced under section 25-2-201(2).

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);
(B) by a motion under Rule 12(c); or
(C) at trial.

(3) Lack of Subject Matter Jurisdiction. If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.

(i) Hearing before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 13. Counterclaim and Crossclaim.

(a) Compulsory Counterclaim.

(1) In General. A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) Exceptions. The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaims. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim against the State. These rules do not expand the right to assert a counterclaim — or to claim a credit — against the State of Montana or a state officer or agency.

(e) Counterclaim Maturing or Acquired after Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) [Abrogated.]

(g) Crossclaim against a Coparty. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) Separate Trials; Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 14. Third-Party Practice.

(a) When a Defending Party May Bring in a Third Party.

(1) Timing of the Summons and Complaint. A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) Third-Party Defendant's Claims and Defenses. The person served with the summons and third-party complaint — the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) Plaintiff's Claims against a Third-Party Defendant. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant

must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) Motion to Strike, Sever, or Try Separately. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) Third-Party Defendant's Claim against a Nonparty. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 15. Amended and Supplemental Pleadings.

(a) Amendments before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(t) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the State of Montana and Other Public Bodies. When the State of Montana, local government, or a state or local officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was served as provided by Rule 4(k) and (l).

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

History: **En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.**

Rule 16. Pretrial Conferences; Scheduling; Management.

(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

(b) Scheduling.

(1) Scheduling Order. Upon request by a party, except in categories of actions exempted by district court rule, the judge must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) Time to Issue. The judge must issue the scheduling order as soon as practicable, but in any event within 90 days of a request by a party.

(3) Contents of the Order.

(A) Required Contents. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) Permitted Contents. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for pretrial conferences and for trial; and

(vi) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) Attendance. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Matters for Consideration. At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under M. R. Evid. 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a master;

(I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and the form of verdict in a jury action; and

(Q) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Pretrial Orders. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Pretrial Conference and Orders. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions.

(1) In General. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) Imposing Fees and Costs. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

IV. Parties

Rule 17. Plaintiff and Defendant; Capacity; Public Officers.

(a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) Action in the Name of the State of Montana for Another's Use or Benefit. When a state statute so provides, an action for another's use or benefit must be brought in the name of the State of Montana.

(3) Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or be Sued. Capacity to sue or be sued is determined by appropriate statutory provisions.

(c) Minor or Incompetent Person.

(1) With a Representative. The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 18. Joinder of Claims.

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money. In tort cases, this rule does not allow a liability or indemnity insurance carrier to join, unless under law or a contract the carrier is directly liable to the person injured or damaged.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 19. Required Joinder of Parties.

(a) Persons Required to be Joined if Feasible.

(1) Required Party. A person who is subject to service of process must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder is not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 20. Permissive Joinder of Parties.

(a) Persons Who May Join or Be Joined.

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) Defendants. Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) Extent of Relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue orders — including an order for separate trials — to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 21. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 22. Interpleader.

(a) Joinder, cross-claim, or counterclaim.

(1) By a Plaintiff. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) By a Defendant. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Substitution.

(1) Grounds. A defendant in a contract or property action may substitute as the defendant a person who is not a party and who demands the same debt or property at issue in the action, upon motion made:

(A) before the defendant files an answer;

(B) with due notice to the person not a party and to the plaintiff; and

(C) upon affidavit that a person not a party to the action:

(i) makes against the defendant a demand for the same debt or property, and

(ii) is not colluding with the defendant.

(2) Deposit of Debt or Delivery of Property. A defendant substituted under this rule must, at the court's discretion, either:

(A) deposit in court the amount of the debt at issue; or

(B) deliver the property at issue or its value to such person as the court may direct.

(3) Discharge of Liability. A defendant's deposit of debt or delivery of property under subsection (b)(2) discharges the defendant's liability to either the plaintiff or the substitute defendant.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 23. Class Actions.

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to the findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require — to protect class members and fairly conduct the action — giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Appeals. Appeal may be filed from an order granting or denying class action certification under this rule, or an order finally and definitively rejecting a proposed class settlement, by notice of appeal filed within the time allowed for appeals under the Montana Rules of Appellate Procedure. An appeal does not stay proceedings in the district court unless the district judge or supreme court so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) may consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(i) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees and other court-approved disbursements. This rule does not prohibit the trial court from approving a settlement that does not create residual funds.

(2) "Access to Justice Organization" means a Montana non-profit entity whose purpose is to support activities and programs that promote access to the Montana civil justice system.

(3) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to an Access to Justice Organization to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage to an Access to Justice Organization or to another non-profit entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, November 29, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, September 16, 2014, eff. January 1, 2015.

Rule 23.1. Derivative Actions.

(a) Prerequisites. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) Pleading Requirements. The complaint must be verified and must:
(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;
(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and
(3) state with particularity:
(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and
(B) the reasons for not obtaining the action or not making the effort.
(c) Settlement, Dismissal, and Compromise. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 23.2. Actions Relating to Unincorporated Associations.

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 24. Intervention.

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:
(1) is given an unconditional right to intervene by statute; or
(2) claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.
(b) Permissive Intervention.
(1) In General. On timely motion, the court may permit anyone to intervene who:
(A) is given a conditional right to intervene by statute; or
(B) has a claim or defense that shares with the main action a common question of law or fact.
(2) By a Government Officer or Agency. On timely motion, the court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on:
(A) a statute or executive order administered by the officer or agency; or
(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.
(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.
(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 25. Substitution of Parties.

(a) Death.
(1) Substitution if the Claim is not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within a reasonable time after service of a statement noting the death, the action by or against the decedent may be dismissed.

(2) Continuation among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting the death must be served in the same manner.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

V. Depositions and Discovery

Rule 26. General Provisions Governing Discovery.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. The information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) Limitations on Frequency and Extent.

(A) When Permitted. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) Specific Limitations on Electronically-Stored Information. A party need not provide discovery of electronically-stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and

(ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule, the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(6) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the discovery;

(B) specifying terms, including time and place, for the discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses.

(d) Sequence and Timing of Discovery. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Responses.

(1) In General. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response:

(A) in a timely manner if the party learns that in some material respect the response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness. For an expert whose opinion is produced in response to an interrogatory served under Rule 26(b)(4), the party's duty to supplement extends both to information included in the response and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time of the preparation and submission of the pretrial order to the court.

(f) Discovery Conference. At any time after commencement of an action, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) a statement of the issues as they then appear;

(2) a proposed plan and schedule of discovery;

(3) any limitations proposed to be placed on discovery;

(4) any issues relating to discovery of electronically-stored information, including the form or forms in which it should be produced;

(5) any other proposed orders with respect to discovery; and

(6) a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys in the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 14 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, including resolution of issues relating to the discovery of electronically-stored information, including the form or forms in which it should be produced, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

(g) Signing Discovery Requests, Responses, and Objections.

(1) Signature Required; Effect of Signature. Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name — or by the party personally, if unrepresented — and must state the signer's address. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, it is:

(A) consistent with these rules and warranted by existing law or by a good faith argument for extending, modifying, or reversing existing law;

(B) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) Failure to Sign. Other parties have no duty to act on an unsigned request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, Dec. 16, 2014, eff. Dec. 16, 2014.

Rule 27. Depositions to Perpetuate Testimony.

(a) Before an Action is Filed.

(1) Petition. A person who wants to perpetuate testimony about any matter cognizable in any district court of the state of Montana may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a district court of the state of Montana but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) Notice and Service. At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place

of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court may appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) Order and Examination. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) Using the Deposition. A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district court action involving the same subject matter.

(b) Pending Appeal.

(1) In General. The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) Motion. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) Court Order. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district court action.

(c) Perpetuation by an Action. This rule does not limit a court's power to entertain an action to perpetuate testimony.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 28. Persons Before Whom Depositions May Be Taken.

(a) Within the United States.

(1) Within Montana. Within the state of Montana, a deposition must be taken before:

(A) an officer authorized by the laws of this state to administer oaths; or

(B) a person appointed by the court in which the action is pending to administer oaths and take testimony.

(2) Within the United States outside Montana. Within the United States or a territory or insular possession subject to United States jurisdiction, outside the state of Montana, a deposition must be taken before:

(A) an officer authorized to administer oaths by the laws of this state, the United States, or of the place where the examination is held; or

(B) a person appointed by the court in which the action is pending.

(3) Definition of "Officer." The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) In Foreign Countries.

(1) In General. A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by Montana law, federal law, or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) Issuing a Letter of Request or a Commission. A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) Form of a Request, Notice, or Commission. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) Letter of Request — Admitting Evidence. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the state of Montana.

(c) Interstate Depositions and Discovery.

(1) Definitions. For purposes of this rule:

(A) "Foreign jurisdiction" means a state other than Montana;

(B) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction;

(C) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

(D) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(E) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(iii) permit inspection of premises under the control of the person.

(2) Issuance of a Subpoena.

(A) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in Montana. A request for issuance of a subpoena under this act does not constitute an appearance in the courts of this state.

(B) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(C) A subpoena under subsection (B) must:

(i) incorporate the terms used in the foreign subpoena; and

(ii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) Service of a Subpoena. A subpoena issued by a clerk of court under paragraph (c)(2) of this rule must be served in compliance with Rule 45.

(4) Deposition, Production, and Inspection. Rules 30, 31, 34, and 45 apply to subpoenas issued under paragraph (c)(2) of this rule.

(5) Application to Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under paragraph (c)(2) of this rule must comply with the rules or statutes of this state and be submitted to the court for the county in which discovery is to be conducted.

(d) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, shall not enter into an agreement for reporting service which does any of the following:

(1) requires the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney;

(2) requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation, or to anyone else who has an interest in the litigation;

(3) gives an exclusive monetary or other advantage to any party; or

(4) compromises the impartiality of the court reporter, or that may result in the appearance that the impartiality of the court reporter has been compromised.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 29. Stipulation Regarding Discovery Procedure.

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified — in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 30. Depositions by Oral Examination.

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by oral questions, depose any persons, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition, and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiff, or by the defendants, or by the third-party defendants; or

(ii) the deponent has already been deposed in the case; or

(iii) plaintiff seeks to take a deposition within 30 days after service of the summons and complaint under Rule 4(d), except that leave is not required if a defendant has served a deposition notice or discovery request.

(B) if the deponent is confined in prison.

(b) Notice of the Deposition; Other Formal Requirements.

(1) Notice in General. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) Producing Documents. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) Method of Recording.

(A) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) Additional Method. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) By Remote Means. The parties may stipulate — or the court may on motion order — that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28, 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) Officer's Duties.

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;
(ii) the date, time, and place of the deposition;
(iii) the deponent's name;
(iv) the officer's administration of the oath or affirmation to the deponent; and
(v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) at the beginning of each unit of the recording medium. The deponent's and attorney's appearance or demeanor must not be distorted through recording techniques.

(C) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, or a governmental agency and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) Examination and Cross-Examination. The examination and cross-examination of a deponent proceed as they would at trial under the Montana Rules of Evidence, except Rule 103. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) Objections. An objection at the time of the examination — whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition — must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) Participating Through Written Questions. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit Examination.

(1) Duration. Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) Sanction. The court may impose an appropriate sanction — including the reasonable expenses and attorney fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) Award of Expenses. Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) Certification and Delivery. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals — after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked — in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) Copies of the Transcript or Recording. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) Notice of Filing. A party who files the deposition must promptly notify all other parties of the filing.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 31. Depositions by Written Questions.

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent already has been deposed in the case; or

(B) if the deponent is confined in prison.

(3) Service; Required Notice. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) Questions Directed to an Organization. A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) Questions from Other Parties. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion or Filing.

(1) Completion. The party who noticed the deposition must notify all other parties when it is completed.

(2) Filing. A party who files the deposition must promptly notify all other parties of the filing.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 32. Using Depositions in Court Proceedings.

(a) Using Depositions.

(1) In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Montana Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) Impeachment and Other Uses. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Montana Rules of Evidence.

(3) Deposition of Party, Agent, or Designee. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) Unavailable Witness. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable — in the interest of justice and with due regard to the importance of live testimony in open court — to permit the deposition to be used.

(5) Limitation on Use of Deposition Taken on Short Notice. A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place — and this motion was still pending when the deposition was taken.

(6) Using Part of a Deposition. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) Substituting a Party. Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) Deposition Taken in an Earlier Action. A deposition lawfully taken and, if required, filed in any federal or state court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Montana Rules of Evidence.

(b) Objections to Admissibility. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) Waiver of Objections.

(1) To the Notice. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) To the Officer's Qualifications. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the Taking of the Deposition.

(A) Objection to Competence, Relevance, or Materiality. An objection to a deponent's competence — or to the competence, relevance, or materiality of testimony — is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) Objections to a Written Question. An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) To Completing and Returning the Deposition. An objection to how the officer transcribed the testimony — or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition — is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 33. Interrogatories to Parties.

(a) In General.

(1) Number. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 50 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2).

(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

(A) by the party to whom they are directed;

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Montana Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically-stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 34. Producing Documents, Electronically-Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes.

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically-stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically-stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) Objections. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically-Stored Information. The response may state an objection to a requested form for producing electronically- stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically-stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically-stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) a party need not produce the same electronically-stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 35. Physical and Mental Examination.

(a) Order for Examination.

(1) In General. The court where the action is pending may order a party whose mental or physical condition — including blood group — is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) Examiner's Report.

(1) Request by the Party or Person Examined. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) Contents. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) Request by the Moving Party. After delivering the reports, the party who moved for the examination may request — and is entitled to receive — from the party against whom the examination order was issued like reports of all earlier or later examinations of the same

condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) Waiver of Privilege. By requesting and obtaining the examiner's report, by deposing the examiner, or by commencing an action or presenting a defense which puts a party's condition at issue, the party examined waives any privilege it may have — in that action or any other action involving the same controversy — concerning testimony about all treatments, prescriptions, consultations, or examinations for the same condition.

The waiver of any privilege does not apply to any treatment, consultation, prescription, or examination for any condition not related to the pending action. On a timely motion for good cause and on notice to all parties and the person to be examined, the court in which the action is pending may issue an order to prohibit the introduction of evidence of any such portion of any person's medical record not related to the pending action.

(5) Failure to Deliver a Report. The court on motion may order — on just terms — that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) Scope. This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 36. Requests for Admissions.

(a) Scope and Procedure.

(1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) Form; Copy of a Document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. A shorter or longer time for responding to requests for admission may be stipulated to under Rule 29 or be ordered by the court.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of the matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion Regarding the Sufficiency of an Answer or Objection. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending it. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

History: **En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.**

Rule 37. Failure to Make Discovery; Sanctions.

(a) Motion for an Order Compelling Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.

(2) Appropriate Court. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) Specific Motions.

(A) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.

(B) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) Evasive or Incomplete Answer or Response. For purposes of this subdivision (a), an evasive or incomplete answer or response must be treated as a failure to answer or respond.

(5) Payment of Expenses; Protective Orders.

(A) If the Motion is Granted or Disclosure or Discovery is Provided After Filing. If the motion is granted — or if the requested discovery is provided after the motion was filed — the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the discovery without court action;

(ii) the opposing party's response or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to Comply With a Court Order.

(1) Sanctions in the District Where the Deposition is Taken. If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) Sanctions by the Court Where the Action is Pending.

(A) For not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) For not Producing a Person for Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information requested in accordance with these rules or fails to disclose information regarding opinions of a witness as required by Rule 26(b)(4), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order the payment of the reasonable expenses, including attorney fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) Failure to Admit. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General.

(A) Motion; Grounds for Sanctions. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) Unacceptable Excuse for Failing to Act. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including

attorney fees, caused by the failure, unless that failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to Provide Electronically-Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically-stored information lost as a result of the routine, good-faith operation of an electronic information system.

(f) Failure to Participate in the Framing of a Discovery Plan. If a party or its attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require that party or attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, June 28, 2022, eff. June 28, 2022.

VI. Trials

Rule 38. Right to a Jury Trial; Demand.

(a) Right Preserved. The right of trial by jury as declared by the Montana Constitution — or as provided by a Montana statute — is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand — which may be included in a pleading — no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may — within 14 days after being served with the demand or within a shorter time ordered by the court — serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 39. Trial by Jury or by the Court.

(a) When a Demand is Made. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no right to a jury trial.

(b) When no Demand is Made. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 40. Scheduling Cases for Trial.

Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a Montana statute.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 41. Dismissal of Actions.

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable state statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 — operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 42. Consolidation; Separate Trials.

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any statutory or constitutional right to a jury trial.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 43. Taking Testimony.

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a Montana statute, the Montana Rules of Evidence, these rules, or other rules adopted by the supreme court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 44. Proving an Official Record.

(a) Means of Proving.

(1) Domestic Record. Each of the following evidences an official record — or an entry in it — that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record — or by the officer's deputy — and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) Foreign Record.

(A) In General. Each of the following evidences a foreign official record — or an entry in it — that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record — or a copy — that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) Other Means of Proof. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) Other Proof. A party may prove an official record — or an entry or lack of an entry in it — by any other method authorized by law.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 44.1. Determining Foreign Law.

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 45. Subpoena.

(a) In General.

(1) Form and Contents.

(A) Requirements — In General. Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action, the court in which it is pending, and its cause number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically-stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(d) and (e).

(B) Command to Attend a Deposition — Notice of the Recording Method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically-Stored Information. A command to produce documents, electronically-stored information, or tangible things, or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically-stored information is to be produced.

(D) Command to Produce; Included Obligations. A command in a subpoena to produce documents, electronically-stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(2) Except as provided in Rule 28(c)(2), a subpoena must issue from the court in which the action is pending.

(3) Issued by Whom. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena as an officer of:

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court where the action is pending.

(4) A party or an attorney responsible for the issuance and service of a subpoena seeking health care information, as defined by Title 50, Chapter 16, shall comply with the provisions of Title 50, Chapter 16.

(b) Service. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law.

(c) Notice of Service.

(1) Notice shall be provided to all parties no less than 10 days before the commanded production of documents, electronically-stored information, or tangible things, or inspection of premises before trial, and shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (d)(3)(A) of this rule, a subpoena:

(A) for attendance at a hearing or trial may be served at any place within the state and may require the person subpoenaed to appear at the hearing or trial irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person;

(B) for the production of documentary evidence and/or the taking of a deposition may require a person to attend an examination or produce documentary evidence only at a place within the state; and

(i) in the case of residents or entities located within the state, within 100 miles of where that person resides or is employed or transacts business in person, or, if on an entity, within 100 miles of the principal location of that entity, or at such other convenient place as is fixed by order of court;

(ii) in the case of non-residents who have been served within the state, within 100 miles of where the non-resident is served, or at any other convenient place as is fixed by order of court.

(3) Proof of service when necessary shall be made by filing with the clerk of court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(d) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance not Required. A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Objections. A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises — or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically-Stored Information. These procedures apply to producing documents or electronically-stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form of Producing Electronically-Stored Information Not Specified. If a subpoena does not specify a form for producing electronically-stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically-Stored Information Produced in Only One Form. The person responding need not produce the same electronically-stored information in more than one form.

(D) Inaccessible Electronically-Stored Information. The person responding need not provide discovery of electronically-stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly assert the claim; and

(ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(d)(3)(A)(ii).

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, November 29, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, July 31, 2012.

Rule 46. Objecting to a Ruling or Order.

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 47. Jurors.

(a) Examination of Jurors.

(1) The court shall permit the parties or their attorneys to conduct the examination of prospective jurors under its supervision. The court may supplement the examination by such further inquiry as it deems proper.

(2) Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

(b) Manner of Selection and Order of Examination of Jurors.

(1) Order of Examination. From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made.

(2) Peremptory Challenges.

(A) When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right.

(B) In the event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors.

(C) In the event all jurors remaining of the original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law.

(D) In the event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges.

(E) The clerk shall keep a record of the order in which jurors are called, and in the event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last-called jurors until a jury of 12 persons and the determined number of alternates shall remain to make up the trial jury.

(c) Alternate Jurors. The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors.

(1) Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties.

(2) An alternate juror shall not join the jury in its deliberation unless called upon by the court to replace a member of the jury.

(3) The alternate juror's conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court.

(4) Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors.

(5) An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

(6) If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by subdivision (b) of this rule.

(7) The additional peremptory challenge may be used only against an alternate juror, and other peremptory challenges allowed by law shall not be used against the alternates.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 48. Juries — Verdict.

At least two-thirds in number of any jury may render a verdict or finding, and such verdict or finding so rendered shall have the same force and effect as if all such jury concurred therein. The parties may stipulate that the jury shall consist of less number than 12.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 49. Special Verdicts and Interrogatories.

(a) Special Verdict.

(1) In General. The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) Instructions. The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) Issues not Submitted. A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General Verdict with Answers to Written Questions.

(1) In General. The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) Verdict and Answers Consistent. When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) Answers Inconsistent with the Verdict. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) Answers Inconsistent with Each Other and the Verdict. When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling.

(a) Judgment as a Matter of Law.

(1) In General. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion after Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment — or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged — the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. If the court does not rule on a properly filed renewed motion for judgment as a matter of law or an alternative or joint request for a new trial within 60 days from its filing date, the motion is deemed denied. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.

(1) In General. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) Effect of a Conditional Ruling. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a Losing Party's New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error.

(a) Requests.

(1) Before or at the Close of the Evidence. At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) After the Close of the Evidence. After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) Objections.

(1) How to Make. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) When to Make. An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) Assigning Error. A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and — unless the court rejected the request in a definitive ruling on the record — also properly objected.

(2) Plain Error. A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion unless these rules provide otherwise. When ruling on a motion under Rule 12 or 56, a court shall specify the grounds therefor with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying the ruling. This may be done in the body of the order or in an attached opinion.

(4) Effect of a Master's Findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) Setting Aside the Findings. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Judgment on Partial Finding. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

(d) Time for determining motions. Motions provided under subdivision (b) of this rule must be determined within the time provided by Rule 59 in the cases of motions for new trial and amendment of judgment and if the court fails to rule on the motion within the 60-day period, the motion must be deemed denied.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, December 14, 2016, eff. July 1, 2017.

Rule 53. Masters.

(a) Appointment.

(1) Definition. As used in these rules, the word "master" includes a referee, an auditor, an examiner, and an assessor.

(A) Standing Masters. A judicial district may appoint one or more standing masters for its district with the concurrence of a majority of all the judges in the district.

(B) Special Masters. A court in which any action is pending may appoint a special master in the action.

(C) Water Masters. The water court may appoint water masters as provided by law.

(2) Compensation. The court must fix a special master's compensation. The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Writ of Execution. When a party ordered to pay the master's compensation does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party. The master may not retain the master's report as security for the master's compensation.

(b) References Limited.

(1) A court may refer to a special master:

(A) an action to be tried by a jury only when the issues are complicated;

(B) an action to be tried by the court only on a showing that some exceptional condition requires the reference, or in an accounting.

(2) Referrals to standing masters and water masters may be as provided by law or by district court and water court rules.

(c) Master's Powers.

(1) In General. The order of reference may:

(A) direct the master to report only upon particular issues;

(B) direct the master to do or perform particular acts;

(C) direct the master to receive and report evidence only;

(D) fix the time and place for beginning and closing the proceedings and for the filing of the master's report; or

(E) otherwise specify or limit the master's powers.

(2) Proceedings. Unless the order of reference directs otherwise, a master may:

(A) regulate all proceedings;

(B) require the production before the master of evidence upon all matters embraced in the reference;

(C) rule upon the admissibility of evidence;

(D) administer oaths and examine parties and other witnesses under oath; and

(E) take all appropriate measures to perform the master's duties under the order efficiently.

(3) Record. On request of a party, the master must make a record of the evidence as provided in the Montana Rules of Evidence for a court sitting without a jury.

(d) Procedure.

(1) Meetings. When a reference is made, the clerk must promptly provide the master with a copy of the order of reference. Unless the order of reference provides otherwise, upon receipt of the order the master must set a time and place for the first meeting of the parties or their attorneys and notify the parties or their attorneys of the meeting. The first meeting must be held within 20 days of the order of reference unless otherwise provided by the order. The master must proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at a meeting, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. Parties may command the attendance of witnesses before the master by subpoenas as provided in Rule 45. A witness who, without adequate excuse, fails to appear or give evidence may be sanctioned or held in contempt as provided by Rules 37 and 45.

(3) Statement of accounts. In accountings, the master may prescribe the form in which the accounts shall be submitted and, when appropriate, may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may:

(A) require a different form of statement;

(B) require proof of the accounts or specific items by oral examination of the accounting parties, or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) Contents and filing. The master must prepare a report upon the matters submitted to the master by the order of reference. If required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master must file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master must file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In nonjury actions. In an action to be tried by the court, the court must accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report, any party may serve written objections to the report. Application to the court for action upon the report and objections must be by motion and upon notice as provided by Rule 6(d). After hearing, the court may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions.

(3) In jury actions. In an action to be tried by a jury, the court may not direct the master to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulations as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference. However, when the parties stipulate that a master's findings of fact are final, the court may only review the master's legal conclusions.

(5) Draft report. Before filing the master's report, a master may submit a draft of the report to counsel for all parties for the purpose of receiving their suggestions.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

VII. Judgment

Rule 54. Judgments; Costs.

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties.

(1) When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any

order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(2) Any order or other decision granted pursuant to Rule 54(b)(1) must comply with the certification of judgment requirements of Montana Rule of Appellate Procedure 6(6).

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs; Attorney Fees.

(1) Costs Other than Attorney Fees. Unless a Montana statute, these rules, or a court order provides otherwise, costs — other than attorney fees — should be allowed to the prevailing party. But costs against the State of Montana, its officers, its agencies, and its political subdivisions may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) Attorney Fees.

(A) Claim to Be by Motion. A claim for attorney fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) Proceedings. Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c). The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) Special Procedures by Local Rule. By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53.

(E) Exceptions. Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under section 37-61-421.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 55. Default; Default Judgment.

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff's request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any Montana statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) Judgment against the State of Montana. A default judgment may be entered against the State of Montana, its officers, its agencies, or its political subdivisions only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 56. Summary Judgment.

(a) By a Claiming Party. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(b) By a Defending Party. A party against whom relief is sought may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) Time for a Motion, Response, and Reply; Proceedings.

(1) These times apply unless the court orders otherwise:
(A) a party may move for summary judgment at any time;
(B) a party opposing the motion must file a response, and any opposing affidavits, within 21 days after the motion is served or a responsive pleading is due, whichever is later; and
(C) the movant may file a reply within 14 days after the response is served.

(2) Hearing.
(A) The right to a hearing is waived unless a party requests a hearing within 14 days after the time for filing a reply brief has expired.
(B) The court may set a hearing on its own motion.

(3) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) Case Not Fully Adjudicated on the Motion.

(1) Establishing Facts. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts — including items of damages or other relief — are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) Establishing Liability. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) Affidavits; Further Testimony.

(1) In General. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

(2) Opposing Party's Obligation to Respond. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) When Affidavits Are Unavailable. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
(1) deny the motion;
(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
(3) issue any other just order.

(g) Affidavits Submitted in Bad Faith. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 57. Declaratory Judgments.

These rules govern the procedure for obtaining a declaratory judgment under Title 27, Chapter 8. Rules 38 and 39, subject to the provisions of section 27-8-302, govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 58. Entering Judgment.

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) Entering Judgment.

(1) Without the Court's Direction. Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) Court's Approval Required. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (b).

(c) Time of Entry. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket; or

(2) if a separate document is required, when the judgment is entered in the civil docket and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) Cost or Fee Awards, and Sanctions. A judgment, even though entered, is not considered final for purposes of appeal under Rule 4(1)(a), M. R. App. P., until any necessary determination of the amount of costs and attorney fees awarded, or sanctions imposed, is made. The district court is not deprived of jurisdiction to enter its order on a timely motion for attorney fees, costs, or sanctions by the premature filing of a notice of appeal.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, October 12, 2021, eff. January 1, 2022.

Rule 59. New Trial; Altering or Amending a Judgment.

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues — and to any party — as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in Montana state court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in Montana state court.

(2) Further Action after a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment. The motion for a new trial must set forth, in the heading of the motion and under the cause number and department identification, the date which is 60 days from the date of the filing of the motion, and the date which is 120 days from the date of filing of the motion.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

(f) Motion Deemed Denied. If the court does not address in a written order a motion for a new trial properly filed according to Rule 59(b), or a motion to alter or amend a judgment properly filed according to Rule 59(e), within 60 days from its filing date, the motion must be deemed denied. If the court issues an order within the 60 days extending the time within which to rule on the motion, the time for ruling may be extended, but if the motion is not ruled upon within 120 days from its filing date, it will be deemed denied.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, December 14, 2016, eff. July 1, 2017.

Rule 60. Relief from Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Motions provided by Rule 60(b) must be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment, and if the court shall fail to rule on the motion within the time frames set forth in Rule 59(f), the motion must be deemed denied. A motion filed under this rule shall follow the format set forth in Rule 59(b).

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0157, December 14, 2016, eff. July 1, 2017.

Rule 61. Harmless Error.

Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) Automatic Stay; Injunction; Exceptions. Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. During this 14-day period, there is imposed, automatically, an order enjoining the judgment debtor(s) from transferring, encumbering, or in any way making unavailable to execution any or all real or personal property, whether tangible or intangible, including, without limitation, cash, accounts, choses in action, leases, contract rights, or other property or any interest therein of the judgment debtor(s). For good cause shown and on terms that protect the respective interests of the parties, the court may enter an order modifying the automatic stay and injunction imposed by this rule. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

(1) an interlocutory or final judgment in an action for an injunction; or

(2) receivership.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment — or any proceedings to enforce it — pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay without Bond on an Appeal by the State of Montana, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the State of Montana, its officer, or its agencies or on an appeal directed by a department of the State of Montana.

(f) Security Other Than Bond — Stipulation of Parties.

(1) In all cases under this rule where supersedeas bond or other terms that secure the opposing party's rights are required, the court, in its discretion, may allow alternate forms of security other than a bond, when adequate equivalent security is provided and the appealing party can show that the judgment creditor's recovery is not in jeopardy.

(2) In all cases, the parties may by written stipulation waive the filing of security.

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings — or suspend, modify, restore, or grant an injunction — while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 62.1. Indicative Rule on a Motion for Relief that is Barred by a Pending Appeal.

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the supreme court remands for that purpose or that the motion raises a substantial issue.

(b) Notice to the Supreme Court. The movant must promptly notify the supreme court clerk if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) Remand. The district court may decide the motion if the supreme court remands for that purpose.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 63. Judge's Inability to Proceed.

(a) Replacement Judge May Proceed. If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) Chief Justice to Assign. The successor judge shall be assigned by the chief justice of the supreme court by written order and may be from a different district.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizing a Person or Property.

At the commencement of and during the course of an action, every remedy is available that provides for seizing a person or property to secure satisfaction of the potential judgment.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 65. Injunctions.

The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

*****No Montana Rule 65.1.*****

Rule 66. Receivers.

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with Montana statutes and the historical practice in Montana courts or local rule. An action in which a receiver has been appointed may be dismissed only by court order.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 67. Deposit into Court.

(a) Depositing Property. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party — on notice to every other party and by leave of court — may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) Investing and Withdrawing Funds. Money paid into court under this rule must be deposited and withdrawn in accordance with the provisions of Title 25, Chapter 8.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 68. Offer of Judgment.

(a) Making an Offer; Judgment on an Accepted Offer. More than 14 days before the trial begins, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer after Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time — but at least 14 days — before a hearing to determine the extent of liability.

(d) Paying Costs after an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 69. Execution.

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 70. Enforcing a Judgment for a Specific Act.

(a) Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done — at the disobedient party's expense — by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the state, the court — instead of ordering a conveyance — may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally-executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the court may order the clerk to issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) Holding in Contempt. The court may also hold the disobedient party in contempt.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 71. Enforcing Relief For or Against a Nonparty.

When an order either grants relief to a nonparty or may be lawfully enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

*****No Montana Rule 71.1.*****

IX. Appeals

Rule 72. Appeal from A District Court to the Supreme Court.
When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Procedure.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

X. District Courts and Clerks: Conducting Business; Issuing Orders

*****No Montana Rules 73-76.*****

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment.

(a) When Court Is Open. Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) Place for Trial and Other Proceedings. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing — other than one ex parte — may be conducted outside the district unless all the affected parties consent.

(c) Clerk's Orders. Subject to the court's power to suspend, alter or rescind the clerk's action for good cause, the clerk may: (A) issue process; (B) enter a default; (C) enter a default judgment under Rule 55(b)(1); and (D) act on any other matter that does not require the court's action.

(d) Notice of Entry of Judgment or Order Served. Within 14 days after entry of judgment or an order in an action in which an appearance has been made, notice of such entry, together with a copy of such judgment or order or general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon all parties who have made an appearance, but any other party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

(e) Transmittal of File on Removal. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

*****No Montana Rules 78-79.*****

Rule 80. Stenographic Transcript as Evidence.
If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

XI. General Provisions

Rule 81. Applicability in General.

(a) Appeals to District Courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, but shall govern procedure and practice relating thereto insofar as these rules are not inconsistent with such statutes.

(b) Rules Incorporated into Statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 82. Jurisdiction and Venue Unaffected.

Except as provided in Rule 4, these rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 83. Rules by District Courts.

Each district court, upon agreement of the judges or a majority thereof, may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules prescribed by the supreme court. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court of this state. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 84. Forms.

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 85. Title.

These rules shall be known as the Montana Rules of Civil Procedure and may be cited as M. R. Civ. P.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Rule 86. Effective Date — Statutes Superseded.

(a) In General. These rules and any amendments take effect at the time specified by the supreme court. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the supreme court specifies otherwise; or

(B) the court determines that applying them in a particular action would be unfeasible or work an injustice.

(b) October 1, 2011 Amendments. If any provision in Rules 1-86 conflicts with another law, priority in time for the purpose of section 3-2-706 is not affected by the amendments taking effect on October 1, 2011.

History: En. Sup. Ct. Ord. No. AF 07-0157, April 26, 2011, eff. Oct. 1, 2011.

Appendix of Forms

Form 1. SUMMONS — OFFICIAL FORM

IN THE DISTRICT COURT OF THE ____________ JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF ____________

A.B., Plaintiff, Civil No....
vs. SUMMONS
C.D., Defendant.
To:______________________________

A lawsuit has been filed against you.

Within 21 days after service of this summons on you or (42 days if you are the State of Montana, a state agency, or a state officer or employee), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Montana Rules of Civil Procedure. Do not include the day you were served in your calculation of time. The answer or motion must be served on the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, whose name and address are listed above.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

Date:____________________ CLERK OF THE DISTRICT COURT

(Seal) By:____________________

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. No. AF 07-0157, January 31, 2012.

Form 2. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1958, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1959, the sum of .... dollars with interest thereon at the rate of .... per cent per annum].[1]

[1] The pleader may use the material in one of the three sets of brackets. This choice will depend upon whether the pleader desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 3. COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff .... dollars according to the account hereto annexed as Exhibit A.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 4. COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff .... dollars for goods sold and delivered by plaintiff to defendant between June 1, 1959, and December 1, 1959.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 5. COMPLAINT FOR MONEY LENT

Defendant owes plaintiff .... dollars for money lent by plaintiff to defendant on June 1, 1959, which is now due.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 6. COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff .... dollars for money paid by plaintiff to defendant by mistake on June 1, 1959, under the following circumstances; (stating the circumstances with particularity. See Rule 9(b)).

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 7. COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff $10,000 for money had and received from one G.H. on June 1, 1959, to be paid by defendant to plaintiff.

Wherefore plaintiff demands judgment against defendant for the sum of $10,000, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 8. COMPLAINT FOR NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street, in Helena, Montana, defendant negligently drove a motor vehicle against the plaintiff who was then crossing said highway.

2. As a result plaintiff's leg was broken when thrown down and was otherwise injured, was prevented from transacting business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in an amount to be determined at trial.

Wherefore plaintiff demands judgment against defendant in an amount to be determined at trial and costs.

History: **En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Form 9. COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C.D. or E.F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE PLAINTIFF'S EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street in Helena, Montana, defendant C.D. or defendant E.F., or both defendants C.D. and E.F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against the plaintiff who was then crossing said highway.

2. As a result plaintiff's leg was broken when thrown down and was otherwise injured, was prevented from transacting business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in an amount to be determined at trial.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in an amount to be determined at trial and costs.

History: **En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993.**

Form 10. COMPLAINT FOR CONVERSION

On or about December 1, 1959, defendant converted to defendant's own use ten bonds of the .... Company (inserting brief identification as by number and issue) of the value of .... dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars, interest and costs.

History: **En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.**

Form 11. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about December 1, 1958, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement; (2) damages in the sum of .... dollars; (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of .... dollars; and (4) judgment for costs.

History: **En. Sec. 80, Ch. 13, L. 1961.**

Form 12. COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

1. Defendant C.D. on or about June 1, 1958, executed and delivered to plaintiff a promissory note (setting forth the note verbatim, or in substance and legal effect, or by annexing a copy, as in Form 2).

2. Defendant C.D. owes to plaintiff the amount of said note and interest.

3. Defendant C.D. on or about December 1, 1958, conveyed property, real and personal (or specify and describe) to defendant E.F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands judgment (1) against defendant C.D. for .... dollars and interest; (2) that the aforesaid conveyance to defendant E.F. be declared void and the judgment herein be declared a lien on said property; (3) for plaintiff's costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 13. COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYERS' LIABILITY ACT (45 U.S.C.A., 51-58)

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at .... and known as Tunnel No. .....

2. On or about June 1, 1958, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workers, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (describing plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning .... dollars per day. By these injuries the plaintiff has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of .... dollars for medicine, medical attendance and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars and costs.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 14. COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1956, plaintiff issued to G.H. a policy of life insurance whereby plaintiff promised to pay to K.L. as beneficiary the sum of ten thousand dollars upon the death of G.H. The policy required the payment by G.H. of a stipulated premium on June 1, 1956, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, 1956, was ever paid and the policy ceased to have any force or effect on July 1, 1956.

3. Thereafter, on September 1, 1956, G.H. and K.L. died as the result of a collision between a locomotive and the automobile in which G.H. and K.L. were riding.

4. Defendant C.D. is the duly appointed and acting executor of the will of G.H.; defendant E.F. is the duly appointed and acting executor of the will of K.L.; defendant X.Y. claims to have been duly designated as beneficiary of said policy in place of K.L.

5. Each of defendants C.D., E.F., and X.Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G.H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G.H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G.H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 15. MOTION TO DISMISS

The defendant moves the court as follows:

(1) To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

(2) To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (Here state reasons, such as (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Montana; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B, respectively; (c) (etc.).)

....
Attorney for Defendant
....
Address

Notice of Motion

To: ...., Attorney for Plaintiff:

Please take notice, that the undersigned will bring the above motion for hearing before this court at the courtroom thereof in the Courthouse at ...., Montana, on the .... day of ...., 20.., at .... o'clock ....M. or as soon thereafter as counsel can be heard.

....
Attorney for Defendant
....
Address

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 23, 2001, eff. Oct. 23, 2001.

Form 16. ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, the defendant is indebted to them jointly with G.H. G.H. is alive; is a citizen and resident of the State of Montana; is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

THIRD DEFENSE

Defendant admits the allegation(s) contained in paragraph(s) .... of the complaint; alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) .... of the complaint; and denies each and every other allegation contained in the complaint.

FOURTH DEFENSE

The right of action set forth in the complaint did not accrue within .... years next before the commencement of this action, and is therefore barred by the provisions of section (setting forth the particular section or subsection applicable thereto).

COUNTERCLAIM

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

CROSS-CLAIM AGAINST DEFENDANT M.N.

(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a complaint.)

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 17. ANSWER TO COMPLAINT SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER

DEFENSE

Defendant denies the allegations of the complaint to the extent set forth in the counterclaim herein.

COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E.F.
2. Plaintiff has demanded the payment of such deposit by virtue of an assignment of it which plaintiff claims to have received from E.F.
3. E.F. has notified the defendant that E.F. claims such deposit, that the purported assignment is not valid, and asserts that the defendant should be held responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E.F. to be made a party defendant to respond to the complaint and to this counterclaim.

(2) That the court order the plaintiff and E.F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E.F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 18. THIRD-PARTY SUMMONS

A.B., Plaintiff,
vs.
C.D., Defendant, and
Third-Party Plaintiff,
vs.
E.F., Third-Party Defendant.

Civil No....
THIRD-PARTY SUMMONS

To: (name the third-party defendant):

A lawsuit has been filed against defendant ______________, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff ______________.

Within 21 days after service of this summons on you (not counting the day you receive it), you must serve on the plaintiff and the defendant an answer to the attached third-party complaint, or a motion under Rule 12 of the Montana Rules of Civil Procedure. The answer or motion must be served on the defendant's attorney, ________________, whose address is ________________; and also on the plaintiff's attorney, ________________, whose address is ____________________. If you fail to do so, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may—but are not required to—respond to it.

Date: ______________________ CLERK OF THE DISTRICT COURT
(Seal) By: ______________________

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. No. AF 07-0157, January 31, 2012.

Form 18-A. NOTICE OF A LAWSUIT AND REQUEST TO ACKNOWLEDGE AND WAIVE SERVICE OF A SUMMONS

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No......
NOTICE OF A LAWSUIT AND REQUEST TO ACKNOWLEDGE AND WAIVE SERVICE OF A SUMMONS

To: (name of defendant—or if the defendant is a corporation, partnership or association name, an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you acknowledge and waive formal service of a summons by signing and returning the enclosed acknowledgment and waiver. To avoid these expenses, you must return the signed acknowledgment and waiver within 21 days (42 days if you are the State of Montana, a state agency, or a state officer or employee) from the date shown below, which is the date this notice was sent. Two copies of the acknowledgment and waiver are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed acknowledgment and waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 21 days from the date you sign the acknowledgment and waiver (42 days if you are the State of Montana, a state agency, or a state officer or employee sued in an official capacity) to answer the complaint.

If you do not return the signed acknowledgment and waiver within the time indicated, I will arrange to have the summons and complaint served on you, and I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: ____________ ____________________

Signature of the attorney or unrepresented party

____

Printed name

____

Relationship to entity or authority to receive service

____

Address

____

E-mail address

____

Telephone number

Comment: Both Form 18B and the "Duty to Avoid Unnecessary Expenses of Serving a Summons" page should always accompany this form.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. Nov. 1988; amd. Sup. Ct. Ord. No. AF 07-0157, January 31, 2012.**

Form 18-B. Acknowledgment and Waiver of Service of a Summons

A.B., Plaintiff, Civil No......

vs. ACKNOWLEDGMENT AND WAIVER OF

C.D., Defendant. SERVICE OF A SUMMONS

To: (name of plaintiff's attorney or the unrepresented plaintiff):

I have received your request to acknowledge and waive service of a summons in this action along with a copy of the complaint, two copies of this acknowledgment and waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Montana Rule of Civil Procedure 12 within 21 days from the date I sign this acknowledgment and waiver form (or 42 days if I am signing on behalf of the State of Montana, a state agency, or a state officer or employee).

If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: ____________ ______________________________

Signature of the attorney or unrepresented party

____

Printed name

____

Relationship to entity or authority to receive service

____

Address

____

E-mail address

____

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Montana Rules of Civil Procedure has a provision to avoid the unnecessary expenses of serving a summons and complaint. A defendant who fails to return a signed acknowledgment and waiver of service requested by a plaintiff will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the acknowledgment and waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the acknowledgment and waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court.

History: En. Sup. Ct. Ord. No. AF 07-0157, January 31, 2012.

Form 19. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

A.B., Plaintiff,	MOTION TO
vs.	INTERVENE
C.D., Defendant,	AS A
E.F., Applicant for	DEFENDANT
Intervention	Civil No....

E.F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in the attached proposed answer on the grounds (here set forth generally the grounds upon which intervention is sought, in accordance with the right of intervention contained in Rule 24) and as such as a defense to plaintiff's claim presenting (setting forth whether the same relates to questions of law or fact, or both) which are common to the main action.

....

Attorney for E.F.,

Applicant for Intervention

....

(Address)

NOTICE OF MOTION

(Contents the same as those in Form 15, or notice and motion may be combined in a notice of motion as provided in Rule 7(b).)

INTERVENER'S ANSWER

(Set forth defenses in accordance with the outline contained in Form 16)

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 20. MOTION FOR PRODUCTION, ETC., UNDER RULE 34

Repealed by Sup. Ct. Ord. No. AF 07-0157, January 31, 2012.

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 21. REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A.B. requests defendant C.D. within .... days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine. [Here list the documents and describe each document.]
2. That each of the following statements is true. [Here list the statements.]

....
Attorney for Plaintiff

....
Address

History: En. Sec. 80, Ch. 13, L. 1961.

Form 22. ALLEGATION OF REASON FOR OMITTING NECESSARY PARTY

John Doe named in this complaint is not made a party to this action [because Doe is not subject to the jurisdiction of this court]; or [for reasons stated].

History: En. Sec. 80, Ch. 13, L. 1961; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

Form 23. SUPERSEDEAS BOND

We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound to pay to (respondent) the sum of $.....

(Appellant) has appealed from that certain judgment (or order) (insert descriptive facts) and has obtained an order staying execution from the district court, and the condition of this bond is that if the judgment (or order) appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment (or order) or the part of such amount as to which the judgment (or order) is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal. If such payment be made then this bond is void, otherwise to be and remain in full force and effect. If the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in the respondent's favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.

....	....
Appellant	Address
....	....
Surety	Address
....	....
Surety	Address
(Justification of Sureties)	....
Form of bond approved.	Judge

(This form with necessary alterations may be used in any situation covered by Rule 62.)

History: En. Sec. 80, Ch. 13, L. 1961 as added by Sec. 1, Ch. 3. L. 1963; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990.

CHAPTER 21
RULES OF APPELLATE PROCEDURE

Part 1 — Rules

Rule
1. Title and scope.
2. Parties - amicus curiae - captions.
3. Interpretation of time requirements.
4. How and when to take an appeal or cross-appeal.
5. Proceeding without the required filing fee.
6. Application of these rules.
7. Mandatory appellate alternative dispute resolution.
8. The record.
9. Transmission of the record and other matters relating to the record on appeal.
10. Filing and service of papers - generally.
11. Form of briefs and other papers - duplication.
12. Briefs.
13. Filing and service of briefs.
14. Jurisdiction - extraordinary writs - supervisory control - original proceedings.
15. Certification of questions of law.
16. Motions.
17. Oral arguments.
18. Media access to court proceedings.
19. Relief.
20. Petitions for rehearing.
21. Remittitur.
22. Stay of judgment or order pending appeal.
23. Undertaking for costs on appeal.
24. Sureties.
25. Substitution of parties in civil cases - acts of personal representatives or guardians when appointment vacated.
26. Extension of time.
27. Notice involving constitutional questions where the state is not a party.
28. Minutes of supreme court.
29. Suspension of the rules.
30. Judicial waiver appeals.

Appendix of Forms

Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Part 1
Rules

Rule 1. Title and scope.

(1) These rules shall be referred to as the Montana Rules of Appellate Procedure and shall be cited as M. R. App. P.

(2) These rules shall govern proceedings before the supreme court.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 2. Parties - amicus curiae - captions.

(1) The following are parties to proceedings before this court and shall be referred to as such in the caption of and signature block of documents filed with this court:

(a) Appellant. The party who appeals from and usually seeks reversal of a decision in the district court. A party who files a cross-appeal shall be referred to as a cross-appellant.

(b) Appellee. The party who usually responds to the appeal, seeking affirmance of the district court. A party who responds to a cross-appeal shall be referred to as a cross-appellee.

(c) Petitioner. A party who seeks relief by way of an original proceeding or a petition for an extraordinary writ.

(d) Respondent. The party against whom a petition is filed.

(e) Relator. The real party in interest in whose name the government brings an action or proceeding before this court.

(f) Intervenor. One who, because of an asserted interest in the outcome, has voluntarily entered into an action or who, on motion, is granted leave to enter a proceeding before this court, despite not being named originally as a party.

(2) Amicus curiae. One who is not a party, but who, upon invitation or leave of the supreme court granted on motion, files a brief in a pending proceeding because of a strong interest in the subject matter.

(3) Counsel - parties not represented by counsel. When these rules require an act by or upon a party, the act shall be performed by or upon counsel for the party or by or upon a party not represented by counsel.

(4) Captions. The caption of an appeal shall list the parties in the same order as the caption used in the district court, with the addition of the designations "appellant" and "appellee" as appropriate. On motion of a party, or on the court's own motion, the caption of a pending cause may be modified to more accurately reflect the actual alignment or status of a party. Upon entry of an order correcting the caption, the cause shall proceed under that caption thereafter.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015.

Rule 3. Interpretation of time requirements.

All time limits set forth in these rules for filing documents or performing any act are actual time limits. In order to comply with a time-specific requirement, the document must be filed or the act performed on or before the last day of the time specified. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included. No additional time may be added to any such time requirement for mailing or transmitting any document and all weekends and holidays are included in the times specified; provided, however, that if the last day of the time limit falls upon a weekend or holiday, then the time limit is extended to the next business day. All documents must be filed in the office of the clerk of the supreme court between 8:00 a.m. and 5:00 p.m. on business days.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 4. How and when to take an appeal or cross-appeal.

(1) Judgments defined.

(a) Final judgment. A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed.

(b) Interlocutory judgment. An interlocutory judgment is an order or decree that determines a preliminary or subordinate question or issue and which enables the court to render a final judgment but does not finally decide the cause.

(2) How commenced.

(a) An appeal is taken by timely filing a notice of appeal in accordance with rule 10(1) of these rules in the office of the clerk of the supreme court substantially complying with Form 1 in the Appendix of Forms, along with payment of the filing fee prescribed by statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. A copy of the notice of appeal shall be contemporaneously served for filing in the office of the clerk of the district court and served on all parties.

(b) A cross-appeal is taken by timely filing a notice of cross-appeal in accordance with rule 10(1) of these rules in the office of the clerk of the supreme court substantially complying with Form 2 in the Appendix of Forms, along with the filing fee prescribed by statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. A copy of the notice of cross-appeal shall be contemporaneously served for filing in the office of the clerk of the district court and served on all parties.

(c) Except where the supreme court grants an out-of-time appeal under section (6) of this rule, the timely filing of a notice of appeal or cross-appeal is required in order to invoke the appellate jurisdiction of the supreme court.

(d) A notice of appeal or cross-appeal shall not be filed by the clerk of the supreme court unless accompanied by the filing fee prescribed by statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. If the notice of appeal or notice of cross-appeal is filed by facsimile in accordance with rule 10(1)(b) of these rules, either the filing fee or the affidavit to proceed without advance payment of fees must be paid (or filed) and actually received by the clerk of the supreme court within 5 business days of the facsimile filing; otherwise the filing shall be treated as void.

(3) Joint or consolidated appeals.

(a) If 2 or more parties are entitled to appeal from a judgment or order of the district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal or cross-appeal, or may join an appeal or cross-appeal after filing separate notices.

(b) Appeals or cross-appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party or parties.

(4) Content of notice of appeal or cross-appeal.

(a) The notice of appeal or cross-appeal shall specify the party or parties taking the appeal or cross-appeal, and shall designate the final judgment or order or part thereof from which the appeal is taken. An appeal from a judgment draws into question all previous orders and rulings excepted or objected to which led up to and resulted in the judgment.

(b) If an appeal is taken after certification by the district court under M. R. Civ. P. 54(b), the notice of appeal shall state that fact, and a copy of the certification order shall be attached to the notice. Upon the filing of such a notice, the clerk of the supreme court shall immediately forward copies thereof to the supreme court. The appeal shall not proceed further until the supreme court has reviewed the certification order, determined that the certification complies with M. R. Civ. P. 54(b) and rule 6(6), and entered an order allowing the appeal to proceed.

(c) The attorney for the appellant or cross-appellant, or the party, if not represented by an attorney, shall certify that the appeal or cross-appeal is or is not subject to the mediation process required by rule 7.

(d) The attorney for the appellant or cross-appellant, or the party, if not represented by an attorney, shall certify that a copy of the notice of appeal or cross-appeal was served by mailing a copy thereof to the clerk of the district court and to counsel of record and every party not represented by counsel.

(e) In the event the appellant or cross-appellant fails to comply with sections (4)(a) through (d) of this rule, the clerk of the supreme court shall issue a written notice, substantially complying with Form 4 in the Appendix of Forms, directing the appellant or cross-appellant to file an amended notice of appeal or cross-appeal within 11 days. A notice issued by the clerk of the supreme court pursuant to this section shall not affect the original filing date of the notice of appeal or cross-appeal.

(f) An appeal or cross-appeal shall not be dismissed for informality of form or title so long as the information required in section (4) of this rule is contained in the notice of appeal or cross-appeal. In the discretion of the supreme court, an appeal may be dismissed for failure of the appellant or cross-appellant to comply with section (4)(e) of this rule.

(5) Time for filing notice of appeal or cross-appeal.

(a) Appeals in civil cases.

(i) In civil cases, including proceedings regarding abused or neglected children under Title 41, Chapter 3, the notice of appeal shall be filed with the clerk of the supreme court within 30 days from the date of entry of the judgment or order from which the appeal is taken. In all other cases in which the United States of America or the State of Montana, or any political subdivision thereof, or any officer or agency thereof is a party, the notice of appeal shall be filed within 60 days from the entry of the judgment or order from which appeal is taken. If notice of entry of judgment or order is required to be served under M. R. Civ. P. 77(d), the 30 days or 60 days, as the case may be, shall not begin to run until service of the notice of entry of judgment or order.

(ii) A notice of appeal filed after the announcement of a decision or order, but before either entry of the written judgment or order from which the appeal is taken or service of the notice of entry of judgment, shall be treated as filed on the day of such entry. The district court is not deprived of jurisdiction to enter the written judgment or order by the premature filing of a notice of appeal.

(iii) A notice of appeal filed prior to the district court's ruling on any necessary determination of the amount of costs and attorney fees awarded, or sanctions imposed, may be dismissed sua sponte and shall be dismissed upon the motion of any party. The district court is not deprived of jurisdiction to enter its order on a timely motion for attorney fees, costs, or sanctions by the premature filing of a notice of appeal, in accordance with Rule 58(e), M. R. Civ. P.

(iv) If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within 15 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by section (5)(a) of this rule, whichever last expires.

(v) If a timely motion pursuant to the Montana Rules of Civil Procedure is filed in the district court by any party:

(A) Under rule 50(b) for judgment;

(B) Under rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if granted;

(C) Under rule 59 to alter or amend judgment;

(D) Under rule 59 for a new trial; or

(E) Under rule 60(b) for relief from a judgment or order, the time for appeal for all parties shall run from the entry of the order granting or denying any such motion or, if applicable, from the time such motion is deemed denied at the expiration of the 60-day period established by M. R. Civ. P. 59(f). No notice of entry of judgment or order is required when any of the foregoing motions are granted, denied, or deemed denied. A notice of appeal filed before the disposition of any of the above motions, whether by entry of an order or by deemed denial, shall be treated as filed on the date of such entry or deemed denial. The district court is not deprived of jurisdiction to enter its order on any such motion by the premature filing of a notice of appeal.

(b) Appeals in criminal cases.

(i) An appeal from a judgment entered pursuant to section 46-18-116 must be taken within 60 days after entry of the judgment from which appeal is taken. A notice of appeal filed after the oral pronouncement of a decision or sentence but before entry of the written judgment or sentence is treated as filed on the date of the written entry. The district court is not deprived of jurisdiction to enter the written judgment or order by the premature filing of a notice of appeal.

(ii) After filing a notice of appeal, retained criminal defense counsel will remain as counsel of record on appeal until and unless counsel either obtains and files with the clerk of the supreme court the client's written consent to counsel's withdrawal, or obtains a supreme court order allowing counsel to withdraw.

(iii) An appeal from a judgment or order made appealable by section 46-20-103 must be taken within 20 days of the entry of the written judgment or order from which appeal is taken.

(6) Out-of-time appeal. In the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice, the supreme court may grant an out-of-time appeal. An out-of-time appeal must be requested by verified petition supported by affidavits, records, and other evidence establishing the existence of the extraordinary circumstances claimed. Extraordinary circumstances do not include mere mistake, inadvertence, or excusable neglect.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015; amd. Sup. Ct. Ord. No. AF 07-0016, October 12, 2021, eff. January 1, 2022.

Rule 5. Proceeding without the required filing fee.

(1) Motion and affidavit to proceed without paying the filing fee - general. A party in a civil appeal or in an original proceeding for a writ in the supreme court who desires to proceed without payment of the required filing fee shall file a combined motion and affidavit in the supreme court for leave to so proceed, as prescribed by Form 3, showing the party's financial condition and inability to pay the filing fee, the party's belief that the party is entitled to redress, and a short statement of the issues the party intends to present. If necessary to determine a party's financial condition, the supreme court may remand a combined motion and affidavit to the district court for fact-finding.

(2) Motion and affidavit to proceed without paying the filing fee - incarcerated person. A person incarcerated in a correctional institution or facility who is a party in a civil appeal or in an original proceeding for a writ in the supreme court and who desires to proceed without payment of the required filing fee shall file a combined motion and affidavit in the supreme court for leave to so proceed, together with an unnotarized form as otherwise prescribed by Form 3, showing the party's financial condition and inability to pay the filing fee, the party's belief that the party is entitled to redress, and a short statement of the issues the party intends to present.

(3) Determination of indigency - party with appointed counsel. If a party has appointed counsel in an appeal or in an original proceeding for a writ, the party is entitled to proceed without paying the filing fee without further action by the party or the supreme court.

(4) Action by supreme court. The supreme court clerk's office is authorized to act on any motion to proceed without payment of the required filing fee. A party may ask the supreme court to review the supreme court clerk's determination. Within 14 days after the clerk's denial of such a motion, the party must either pay the filing fee or file a request for review by the supreme court. The party may present new evidence to the court in its request for review. The supreme court shall review the supreme court clerk's determination de novo.

(5) Limitations of waiver. The grant of a motion to proceed without payment of the required filing fee waives the filing fee but does not entitle the party to waive other fees or costs, such as transcript preparation costs or attorney fees.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, February 20, 2008, eff. March 21, 2008; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, July 24, 2012; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015.

Rule 6. Application of these rules.

(1) What a court may review upon appeal from a judgment. A party may appeal from a final judgment in an action or special proceeding and from those final orders specified in sections (2), (3), and (4) of this rule. Upon appeal from a final judgment entered in an action or special proceeding in a district court, this court may review the judgment, as well as all previous orders and rulings excepted or objected to which led to and resulted in the judgment.

(2) Orders appealable in criminal cases. In criminal cases, the parties are directed to the provisions of sections 46-20-103 and -104.

(3) Orders appealable in civil cases. In civil cases, an aggrieved party may appeal from the following, provided that the order is the court's final decision on the referenced matter:

(a) From an order made after final judgment, including an order vacating or refusing to vacate a default judgment, and an order granting or denying a motion for new trial or to alter or amend a judgment;

(b) From a "deemed denied" motion that was made pursuant to M. R. Civ. P. 50(b), 52(b), 59, or 60(b);

(c) From an order denying a motion to dismiss for lack of subject matter jurisdiction;

(d) From an order permitting or refusing to permit an action to be maintained as a class action, or an order finally and definitively rejecting a proposed class action settlement;

(e) From an order granting or dissolving, or refusing to grant or dissolve, an injunction or an attachment;

(f) From an order granting or denying a motion to change venue on the basis that the county designated in the complaint is not the proper county;

(g) From an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver;

(h) From an order directing the delivery, transfer, or surrender of property;

(i) From an order in a partition action directing or refusing to direct a partition to be made;

(j) From a contempt judgment or order in a family law proceeding when, and only when, the judgment or order appealed from includes an ancillary order entered as a result of the contemptuous conduct which affects the substantial rights of the parties involved; and

(k) From an order granting or denying a motion for substitution of judge.

(4) Orders appealable in estate, guardianship, and probate matters. In estate, guardianship, and probate matters, the following orders are considered final and must be appealed immediately, and failure to do so will result in waiver of the right to appeal:

(a) An order granting or refusing to grant, or revoking or refusing to revoke, letters testamentary or of administration or guardianship;

(b) An order admitting or refusing to admit a will to probate, in favor of or against the validity of a will, or revoking or refusing to revoke the probate thereof;

(c) An order setting apart or refusing to set apart property or an order making or refusing to make an allowance for a surviving spouse or child;

(d) An order directing or refusing to direct the partition, sale, or conveyance of real property;

(e) An order refusing, allowing, or directing the distribution of any estate or part thereof, or the payment of a debt, claim, legacy, or distributive share;

(f) An order settling an account of an executor, administrator, or guardian; and

(g) An order confirming or refusing to confirm a report of an appraiser setting apart a homestead.

(5) Orders and judgments that are not appealable. Although not exhaustive, the following judgments and orders are among those that are not appealable:

(a) In cases involving multiple parties or multiple claims for relief, an order or judgment which adjudicates fewer than all claims as to all parties, and which leaves matters in the litigation undetermined; subject, however, to the provisions of section (6) of this rule;

(b) Orders denying motions for summary judgment or motions to dismiss, or granting partial summary judgment;

(c) In proceedings regarding abused or neglected children, orders granting temporary investigative authority and/or protective services, and orders of temporary custody;

(d) Judgments or orders made in cases of civil or criminal contempt, except as provided in section (3)(j) of this rule and section 3-1-523;

(e) Orders granting or denying sanctions; and

(f) Interlocutory judgments, except as provided in sections (3)(j) and (6) of this rule.

(6) Certification of a judgment as final for purposes of appeal. Notwithstanding the provisions of section (5)(a) of this rule, a district court may direct the entry of final judgment as to an otherwise interlocutory order or judgment, only upon an express determination that there is no just reason for delay, pursuant to M. R. Civ. P. 54(b). In so doing, the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final, and the court shall, in accordance with existing case law, articulate in its certification order the factors upon which it relied in granting certification, to facilitate prompt and effective review. A certification order failing to meet these requirements shall be subject to summary dismissal pursuant to rule 4(4)(b).

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0110, November 29, 2011.

Rule 7. Mandatory appellate alternative dispute resolution.

(1) Statement of purposes. The mandatory appellate alternative dispute resolution procedure is designed to achieve the following goals:

(a) Provide an alternative means to resolve certain civil appeals and to enhance public confidence in the appellate process;

(b) Help the parties avoid the additional legal expense and emotional cost of an appeal;

(c) Prioritize the use of court resources for cases that cannot be resolved between the parties;

(d) Help the parties realistically explore a settlement; and

(e) Provide a speedy and just resolution of the dispute.

(2) Appeals subject to rule. The following categories of appeals shall be subject to the provisions of this rule:

(a) Workers' compensation. All appeals from the Workers' Compensation Court.

(b) Domestic relations. Appeals in domestic relations cases, including but not limited to all dissolution issues, child custody and support issues, maintenance issues and modifications of orders entered with respect to those issues; but excluding proceedings regarding abused or neglected children, paternity disputes, adoptions, and all juvenile and contempt proceedings when the excluded matters constitute the only issues on appeal. In addition, unless each party provides written, informed consent within 15 days of the filing of the notice of appeal, the supreme court will not order appellate mediation in cases where the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. An appellant or cross-appellant desiring to opt out of mandatory mediation under this provision shall certify in the notice of appeal or cross-appeal that the domestic relations case is not subject to mandatory mediation pursuant to this section of the rule.

(c) Money judgments. Appeals in actions seeking monetary damages/recovery.

(d) Appeals which the supreme court, in its discretion, designates as appropriate for mediation.

(3) Time Limitations and supplementary process.

(a) Time limitations. Upon filing a notice of appeal in the manner and time required by rules 4 and 6, the parties and the mediator shall have 75 days within which to complete the process required by this rule. However, in the event the parties are made subject to this rule only as a result of a cross-appeal, the parties shall have 75 days from the filing of the notice of cross-appeal.

(b) Supplementary process. The process required by this rule shall be supplementary to, and have no effect on, the parties' duties, obligations, and time requirements otherwise provided for in these rules; provided, however, that the parties may, by stipulation filed with the clerk of the supreme court and served on the clerk of the district court, hold the time requirements of these rules in abeyance pending completion of the process required by this rule. In the event the parties stipulate to holding time requirements of these rules in abeyance, all such time requirements shall run from the earlier of the date of the filing of the mediator's report, or the expiration of the 75-day time limit.

(4) Selection or appointment and payment of mediator - immunity.

(a) Mediators shall be selected or appointed as provided in sections (4)(b) and (d) of this rule and shall enjoy such judicial immunity as the supreme court would enjoy if performing the same functions. Upon selection or appointment, the clerk of the supreme court shall mail to the mediator a copy of the notice of selection or order of appointment of mediator, the mediator instructions, and mediator's, attorneys', and parties' mediation evaluation forms.

(b) The parties may jointly select a mediator for purposes of complying with the mediation process required by this rule within 15 days of the filing of the notice of appeal or cross-appeal which subjects the case to the requirements of this rule; in the event the parties do not jointly select a mediator, one will be assigned by the clerk of the supreme court.

(c) In the event the parties voluntarily select a mediator, the appellant shall file with the clerk of the supreme court a notice of selection of mediator, substantially complying with Form 5 in the Appendix of Forms, within the above-referenced 15-day deadline.

(d) In the event the parties do not voluntarily and timely select a mediator, the clerk of the supreme court shall appoint as a mediator for the appeal the next self-nominated attorney, in reasonably close proximity to the parties, if possible, on a list maintained by the clerk for that purpose pursuant to section (4)(e) of this rule. The order of appointment, substantially complying with Form 6 in the Appendix of Forms, shall be signed by the clerk of the supreme court and served upon the mediator and the parties to the appeal. The parties may substitute a mediator of their choice for the mediator appointed by the clerk only if, within 10 days of the clerk's appointment, they file a written stipulation signed by all parties agreeing upon a substitute mediator. The parties must also serve a copy of such stipulation upon the mediator appointed by the clerk.

(e) The clerk of the supreme court shall maintain 3 lists of resident Montana attorneys who are members in good standing of the State Bar of Montana, have been licensed as attorneys for no less than 5 years, and have indicated their desire to be appointed as mediators for purposes of this rule by completing and submitting to the clerk an original and 2 copies of the mediator background information form available from the clerk. The separate lists will reflect those attorneys desiring appointment as mediators for the workers' compensation, domestic relations, and/or money judgment appeals which are subject to this rule.

(f) The parties shall share the mediator's fee and incidental expenses equally. However, in money judgment cases where there is $5,000 or less at issue and the judgment is for $5,000 or less, any mediator appointed by the clerk of the supreme court under section (4)(d) shall serve pro bono, and the mediator's incidental expenses shall be shared equally by the parties. All pro bono appointments shall be so indicated in the order of appointment.

(g) If a party is unable to pay for mediation and if the parties are unable to secure the services of a mediator who is willing to serve without fee or at a reduced rate, the party may opt out of the mandatory alternative dispute resolution process by filing with the clerk of the supreme court an affidavit stating the party is unable to afford appellate mediation. Such an affidavit must be filed within the 15 days allowed for the parties to select a mediator under rule 7(4)(b). If the affidavit is filed after the appointment of a mediator, the affidavit will be rejected.

(5) Mediation process. The mediation process required by this rule shall comply with the procedures provided in this section.

(a) The mediation required by this rule is an informal, confidential, nonadversarial process in which an impartial third person, the mediator, assists the parties to an appeal in resolving the differences between them. The decision-making authority remains with the parties; the mediator has no authority to compel a resolution or to render a judgment on any issue. The role of the mediator is to encourage and assist the parties to reach their own mutually-acceptable resolution by facilitating communication; helping to clarify issues, interests, and the appellate perspective; fostering joint problem-solving; and exploring settlement alternatives.

(b) Upon selection or appointment to mediate an appeal as provided by this rule, the mediator shall schedule a mediation conference between the parties for the purpose of attempting to resolve the issues on appeal.

(c) The conference shall be held in person; provided, however, that if distance, time, or other considerations make an in-person conference impractical, the mediator may hold the conference online or by telephone at such time and place as the mediator may determine. The mediation shall proceed in substantial compliance with the requirements of this rule and the guidelines and format set forth in the mediator's instruction sheet.

(d) The appellant, or the cross-appellant in those cases where only the cross-appeal results in the case being subject to this rule, shall submit the required statement of position to the mediator and to the responsive party within 15 days of the date the notice of selection or order of appointment of the mediator is filed under section (4) of this rule. The responsive party shall have 7 days to submit a responsive statement of position. In the event of a cross-appeal, the appellant shall have an additional 7 days to submit its statement of position relative to the issues raised by the cross-appeal.

(e) The parties' respective submissions shall not exceed 10 pages in length, double spaced, on standard letter-sized paper; provided, however, that the parties may attach such exhibits of record and transcript excerpts as the parties may wish the mediator to consider.

(f) The parties shall serve on the mediator and each party their written statement of position substantially complying with Form 7 in the Appendix of Forms and containing, at a minimum, the following:

(i) A statement of issue(s) on appeal and the manner in which each issue was preserved;

(ii) A statement of the standard of review applicable to each issue;

(iii) The position of the party with respect to each issue, with citations to legal authority; and

(iv) In the case of the appellant and any cross-appellant, a copy of the order or judgment from which the appeal is taken.

(g) In addition to the statements of position to be served on the mediator and opposing parties, each party may submit to the mediator a separate confidential submission containing such additional information relative to its position regarding settlement as it may wish to tender in order to facilitate the mediation process required by this rule. Unless otherwise agreed, such a submission shall not exceed 5 pages. The confidential submission, if any, shall be served on the mediator contemporaneously with the service of the party's statement of position.

(h) Each party, or a representative of each party with authority to participate in settlement negotiations and affect a complete compromise of the case, shall participate in the mediation conference. If an insurance carrier, other indemnitor, or self-insurance administrator is involved, a representative with ultimate settlement authority shall participate in the mediation conference.

(6) Proceedings confidential. The mediation process shall be confidential. All proceedings held, submissions tendered, and statements made by anyone in the course of the mediation process required by this rule constitute offers to compromise and statements made in compromise negotiations pursuant to M. R. Evid. 408 and are inadmissible pursuant to the terms of that rule.

(7) Completion of mediation process.

(a) Immediately upon the conclusion of the mediation conference, the mediator shall file a mediator's report substantially complying with Form 8 in the Appendix of Forms with the clerk of the supreme court, and serve copies on the parties.

(b) If the mediator files a report, with proper notice to the parties, indicating that the matter has been settled, the court will dismiss the appeal 30 days later absent a motion to keep the cause number open.

(c) None of the forms, notices, or stipulations to be filed with the clerk of the supreme court shall contain any information relating to the parties' respective positions regarding the issues on appeal, the parties' positions regarding settlement, or any substantive matter which is the subject of the litigation; the exclusive and sole purposes of forms and notices to be filed with the clerk of the supreme court are to maintain status records and statistics, to ensure orderly compliance with the process required by this rule, and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case and resulted in a stipulation for dismissal.

(d) The parties are encouraged to continue to pursue settlement efforts in the event the mediation process required by this rule does not resolve the appeal and the case returns to the ordinary appeal process.

(8) Sanctions. Substantial noncompliance with this rule may, on motion of a party or by the supreme court sua sponte, result in the assessment of mediator fees, imposition of monetary sanctions, costs, dismissal of the appeal, or such other sanction as the supreme court deems appropriate.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015.

Rule 8. The record.

(1) Composition of the record on appeal - generally. Except as otherwise provided in these rules, the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases. A copy of any challenged jury instruction, whether given or offered but not given, must be made a part of the record on appeal.

(2) Duty to present sufficient record. The appellant and any cross-appellant have the duty to present the supreme court with a record sufficient to enable it to rule upon the issues raised. Failure to present the court with a sufficient record on appeal may result in dismissal of the appeal or affirmance of the district court on the basis the appellant has presented an insufficient record. If the supreme court remands for completion or supplementation of the record, the party presenting the deficient record will be charged with all shipping and postage costs for returning the record to the clerk of the district court.

(3) Duty of the appellant to request the transcript of proceedings - notice to the appellee - costs of producing - generally.

(a) Absent a stipulation filed with the clerk of the supreme court and served upon the clerk of the district court pursuant to rule 7(3), the appellant shall order from the court reporter, in writing, a transcript of the proceedings deemed necessary for the record on appeal on the same date the notice of appeal is filed. A copy of the written request for transcripts, substantially complying with Form 9 in the Appendix of Forms, shall be contemporaneously filed with the clerk of the district court and served on the appellee. In the event of a filed rule 7(3) stipulation, the requirements of this section shall begin on the day the mediator's report is filed or on day 76 after the filing of the notice of appeal, whichever first occurs.

(b) Within 11 days of the filing of the notice of appeal or notice of cross-appeal, whichever is filed later, the appellee shall either order additional transcripts deemed necessary in writing or, if the transcripts requested are not for purposes of the cross-appeal, the appellee may move the district court for an order requiring the appellant to order the additional transcripts at its expense. A copy of the written order or motion shall be contemporaneously filed with the clerk of the supreme court and served upon the appellant.

(c) Except as provided in section (5) of this rule, the cost of producing any requested transcript shall be paid by the party requesting the transcript, and payment shall be made at the time of ordering the transcript or satisfactory payment arrangements shall be made with the court reporter. An attorney who requests a transcript shall be personally liable for the payment of the costs of the transcript. Transcript costs shall be calculated as provided in section 3-5-604.

(4) Format, filing and service of transcripts, and number of copies.

(a) A transcript shall contain a title page, index pages listing witnesses and exhibits, as applicable, the body of the transcript, and a page certifying in writing - and executed by the court reporter - that the transcript is a true and correct verbatim record of the proceeding transcribed. The person responsible for preparing the transcript shall also include a certificate of service of the transcript on all applicable parties. Each page shall measure 8½ by 11 inches, with combined left and right standard text margins not exceeding 2.25 inches. A page number shall appear in the upper right corner of each page.

(b) Transcripts filed with the clerk of the supreme court shall include 1 paper copy of the transcript in reduced format containing 4 transcript pages on each 8½ by 11-inch page, and a digital copy prepared on a Read Only Digital Video Disk (DVD-R), in searchable Portable Document Format (PDF), certified in writing as true and correct by affixing the court reporter's signature on the front of the DVD-R.

(5) Except as provided by statute, parties are not entitled to transcripts at state expense absent extraordinary circumstances and on order of the supreme court.

(6) Correction or modification of the record. If any difference arises as to whether the record accurately discloses what occurred in the district court, the difference shall be submitted to and settled by the district court within the time provided for transmission of the record or within such time as the district court may for good cause permit, and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, on motion of a party or upon its own motion, either before or after transmission of the record to the supreme court, may order that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

(7) Record or transcript unavailable. If a trial or other proceeding was not reported in whole or in part, or if a transcript is otherwise unavailable, a statement of the evidence of the trial, proceeding, or unavailable transcript may be prepared as follows:

(a) A party or parties who proceed under sections (7)(b) or (c) of this rule must, within the time provided for filing the statement and stipulation described in section (7)(b) or the motion described in section (7)(c) of this rule, notify, in writing, the clerk of the district court and the clerk of the supreme court that all or a portion of the record or a transcript is otherwise unavailable, and that the provisions of this rule have been invoked.

(b) Statement by agreement and stipulation. Within 30 days after the filing of the notice of appeal, the parties may prepare and file with the clerk of the district court a joint written statement and stipulation of the unavailable evidence from the best available means including the parties' recollections. This statement and stipulation must identify the trial or proceeding which was not reported or the transcript which is not otherwise available, along with a statement of the reason for such failure to the best of the persons' knowledge and belief. This statement must specify the source or sources of the parties' statements of evidence and must be limited to unavailable evidence which is relevant to the issue or issues on appeal.

(c) Statement by motion and order. Alternatively, within 15 days after the filing of the notice of appeal, a party may file a motion with the clerk of the district court for leave to prepare a statement of the unavailable evidence from the best available means, including the party's recollection.

(i) The motion must be in writing, and identify the trial or proceeding which was not reported or the transcript which is not otherwise available, along with a statement of the reason for such failure, to the best of the movant's knowledge and belief. The motion must be served upon opposing parties, each of whom shall have 15 days in which to respond in writing.

(ii) If the district court grants the motion, the party must, within 20 days of the district court's order, prepare, serve, and file with the clerk of the district court a statement of the unavailable evidence from the best available means, including the party's recollection. This statement must specify the source or sources of the party's statements of evidence and shall be limited to unavailable evidence which is relevant to the issues on appeal. From the date the statement is filed, the opposing party shall have 15 days to respond in writing.

(d) The district court shall examine the statement of unavailable evidence and any response thereto filed pursuant to sections (7)(b) and (c) of this rule, may hold a hearing or hearings thereon and, thereafter, shall promptly file with the clerk of the district court an order adopting or rejecting, in whole or in part, the statement of unavailable evidence such that any statement adopted by the district court most accurately reflects the unavailable evidence. The parties shall have 15 days from the date of filing of the district court's order to file written objections with the clerk of the district court, with contemporaneous service on opposing parties.

(e) The district court's order entered pursuant to section (7)(d) of this rule shall then constitute the record on appeal as to the unavailable evidence. Any properly preserved objection to the district court's order or to the proceedings under this rule may be raised in an amended notice of appeal or cross-appeal filed and served within 15 days of the transmission of the district court's order and associated documents by the clerk of the district court to the clerk of the supreme court.

(f) The district court's order under section (7)(d) of this rule, including timely objections together with all available portions of the record and transcripts, shall be transmitted by the clerk of the district court to the clerk of the supreme court upon the expiration of the time for filing objections in section (7)(d). The appellant's opening brief on appeal is due 45 days following such transmission.

(g) Notwithstanding the filing of the notice of appeal, the district court retains jurisdiction to extend the times set forth in sections (7)(b) and (c) of this rule for good cause shown but not to exceed 45 days, to resolve the matter of the unavailable evidence and to issue the order required under section (7)(d) of this rule.

(8) Agreed statement when the record on appeal is unavailable. When the record on appeal as defined in section (1) of this rule is unavailable due to uncontrollable circumstances, the parties may prepare, sign, and file with the district court within 20 days after the filing of the final notice of appeal, a statement of the case showing how the issues presented by the appeal arose and were decided in the district court, and setting forth only so many of the facts averred and proved, or sought to be proved, as are essential to a decision by the supreme court on the issues presented. If the statement conforms to the truth, it shall be approved by the district court and, together with such additions as the district court may consider necessary to fully present the issues raised on appeal, certified and transmitted to the clerk of the supreme court within the 40 days provided for transmission of the record on appeal. The parties may include copies of the agreed statement as an appendix to their briefs. In the event the provisions of this rule are used to certify the record on appeal, the parties shall be bound thereby and the supreme court shall rely solely on the record as certified in resolving the appeal.

(9) Record of proceedings in courts of limited jurisdiction that are courts of record. The electronically-recorded record of a trial or other proceeding in a court of limited jurisdiction that is a court of record, which is appealed to the supreme court from a district court, shall be filed as a CD/DVD or analog tape together with the district court record.

(a) The clerk of the court from which the original appeal is taken must include with the CD/DVD or analog tape the following information, together with a text file reflecting the information on the CD/DVD or analog tape: originating court name; originating court case number; short case title; date(s) of proceeding; type of proceeding; and audio file name and file type. For CDs or DVDs, the preferred audio file reader, which shall be FTR Player, Microsoft Media Player, or RealPlayer, also must be identified.

(b) In citing to any facts relevant to the issues presented for review from the court of limited jurisdiction that is a court of record, pursuant to rule 12(1)(d), the parties shall reference the location on the CD/DVD or analog tape as Start Time: HH/MM/SS End Time: HH/MM/SS.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, February 20, 2008, eff. March 21, 2008; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 9. Transmission of the record and other matters relating to the record on appeal.

(1) Time for transmission - duty of appellant - generally. The record on appeal, including any transcript in the format required by rule 8(4)(b), shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is reduced or extended by an order entered under section (3) or (4) of this rule, or a stipulation holding the time requirements of these rules in abeyance is filed with the clerks of the supreme court and the district court pursuant to rule 7(3). In the event of a cross-appeal, a single record shall be transmitted within 40 days after the filing of the notice of cross-appeal.

(2) Duty of clerk to transmit the record. The clerk of the district court shall transmit the record on appeal within the time provided in section (1) of this rule, or such reduced or extended time as may be ordered by the district court or the supreme court pursuant to section (3) or (4) of this rule. The clerk of the district court shall number the documents comprising the record and transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. In the event the clerk of the district court determines that exhibits are too large or weighty to be conveniently mailed, the clerk shall notify the parties in writing that the item or items will not be transmitted and will so indicate as a numbered item in the list of documents. If a party desires a large or weighty exhibit so identified to be transmitted, the party shall notify the clerk in writing and make advance arrangements with the clerks of the district court and the supreme court for the safe transportation, chain of custody, and receipt of the item(s), at the party's expense. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the clerk of the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date on which the record is transmitted to the clerk of the supreme court.

(3) Reduction or extension of time for transmission of the record by the district court - duties of court reporter and appellant - generally.

(a) A motion to reduce the time for transmission of the record shall be made only in extraordinary circumstances, and only on a showing that the court reporter can prepare any ordered transcripts within the reduced period. A motion to reduce the time for transmission shall be filed and served on the opposing party within 15 days after the filing of the notice of appeal and shall be brought to the district court's attention immediately.

(b) Except in involuntary mental commitments and proceedings regarding abused or neglected children, a motion for extension of time for transmission of the record may be filed with the district court by the appellant or the court reporter based on the court reporter's inability to timely prepare a transcript or transcripts, but the motion must be filed within the 40-day time for transmission of the record. The district court may grant the motion for a period not to exceed 90 days from the filing of the first notice of appeal. The clerk of the district court shall immediately transmit any such order to the clerk of the supreme court, and the clerk of the supreme court shall file the order and cause it to be docketed.

(4) Extension of time for transmission of the record by the supreme court - duties of the appellant and the court reporter. A motion for extension of time to transmit the record on appeal in an involuntary mental commitment or proceedings regarding abused or neglected children, and any other motion for extension of time for transmission of the record subsequent to one granted by the district court pursuant to section (3) of this rule, shall be filed by the appellant with the clerk of the supreme court as a motion for an extension of time to transmit the record and shall be accompanied by an affidavit of the court reporter setting forth in detail why the transcript(s) have not been timely prepared and why the additional time sought is needed. In like manner as extensions of time to file briefs pursuant to rule 26(2) of these rules, there shall be a presumption against granting motions for extension of time to transmit the record under this section. A motion for extension and supporting affidavit shall state the date on which

the transcript will be filed if the motion is granted. A motion for extension of time to transmit the record captioned as a motion for extension of time to file a brief will not be considered by the supreme court. The clerk of the supreme court shall docket such a motion as received and rejected, stamp the original and one copy of such a motion with a "received" date stamp and a "rejected per rule 9(4)" stamp, return the copies at the appellant's counsel's expense, and docket the rejection.

(5) Retention of the record in the district court by court order. If the record or a part thereof is required in the district court pending the appeal, the district court may enter an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries, together with such parts of the original record as the district court may allow, to the clerk of the supreme court in lieu of the entire record on appeal.

(6) Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, the clerk of the supreme court shall file the record. The clerk of the supreme court shall immediately give notice to all parties of the date on which the record was filed.

(7) Return of the record. The clerk of the supreme court shall return the record to the clerk of the district court upon issuance of the remittitur or on remand. In civil cases, the clerk of the supreme court shall charge the appellant mailing costs for the return of the record.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 10. Filing and service of papers - generally.

(1) Filing.

(a) Generally. Papers required or permitted to be filed must be placed in the custody of the clerk of the supreme court within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk of the supreme court, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

(b) Facsimile filing. Procedural motions and notices of appeal and cross-appeal, substantially complying with Form 1 or 2 in the Appendix of Forms, may be filed by facsimile between 8:00 a.m. and 5:00 p.m. on business days. A facsimile shall not be timely filed unless it is actually received by the clerk of the supreme court within the time fixed for filing of the document. Any document filed by facsimile shall contain a statement of the date and time of the facsimile filing in the certificate of proof of service prescribed in section (4) of this rule. The facsimile must be filed by the clerk of the supreme court.

(c) A party to an appeal or original proceeding who is represented by counsel may not file pleadings, motions, or documents on the party's own behalf, except that a party may file a motion for substitution or removal of counsel.

(2) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk of the supreme court shall, at or before the time of filing, be served by the party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel. In criminal cases appealed by the defendant and in appeals relating to involuntary commitment and proceedings regarding abused or neglected children, all briefs, motions, and other papers, not including transcripts, shall be served on both the county attorney and the attorney general. In such cases, transcripts shall be served on the attorney general only, and an electronic copy of filed transcripts will be made available to the county attorney at no cost by the court reporter upon request.

(3) Manner of service. Service may be made personally or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(4) Proof of service. Papers presented for filing shall contain a certificate of service in the form of a statement of the date and manner of service and of the names and addresses of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk of the supreme court may permit papers to be filed without a certificate of service but shall require the certificate to be filed within 5 business days.

(5) Number of copies to be filed. A signed original and 7 copies of all motions (other than motions for extension of time), petitions for rehearing, and the answers or responses thereto, shall be filed with the clerk of the supreme court unless otherwise ordered by the court. The

original only of motions for extension of time shall be filed. The number of copies of transcripts shall be in accordance with rule 8(4)(b) and the number of copies of briefs shall be in accordance with rule 13(2). At the time of filing an uncontested procedural motion, counsel shall present a proposed order granting the relief requested, together with sufficient copies for service upon all parties, as well as stamped envelopes addressed to the same.

(6) Use of initials for parties in certain proceedings. In any proceeding regarding abused or neglected children under Title 41, Chapter 3, or in any proceeding under Title 40, Chapter 6, part 1 (Uniform Parentage Act); Title 41, Chapter 5 (Youth Court Act); Title 42 (Adoption); Title 52, Chapter 3, part 8 (Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act); Title 53, Chapter 20 (Developmental Disabilities); Chapter 21 (Mentally Ill); or Chapter 24 (Alcoholism and Drug Dependence); or Title 72, Chapter 5, part 3 (Guardians of Incapacitated Persons), only the initials of the child, parent(s), or individual party(ies), as the case may be, may be used in all filings, unless otherwise provided by law.

(7) Redaction of confidential personal information.

(a) Confidential personal information includes complete social security numbers, complete financial account and taxpayer identification numbers, full birth dates of any person, and information that is not to be accessible to the public pursuant to state or federal law.

(b) Confidential personal information shall be redacted from documents filed with the clerk of the supreme court by the party who files the document. The original document without redaction of confidential personal information shall be filed with the clerk and remain under seal absent a request to obtain access granted under the Rules for Privacy and Public Access to Court Records in Montana or further order of the supreme court.

(c) Exemptions from the redaction requirement. The redaction requirement does not apply to the following:

(i) a financial account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(ii) the record of an administrative or agency proceeding;

(iii) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; and

(iv) a filing made under seal.

(d) Filings made under seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective orders. For good cause, the court may by order in a case:

(i) require redaction of additional information;

(ii) limit or prohibit a nonparty's remote electronic access to a document filed with the court; or

(iii) provide other guidance regarding privacy and access consistent with the Rules for Privacy and Public Access to Court Records in Montana.

(f) Option for filing a reference list. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Appendices. Because copies of documents included in appendices to briefs are not published and are solely for the supreme court's use, confidential personal information appearing in appendices need not be redacted.

(h) Non-conforming documents.

(i) Waiver. A person waives the protection of rule 10(7) as to the person's own information by filing it without redaction and not under seal.

(ii) Sanctions. If a party fails to comply with this rule, the court on motion of another party or its own motion, may order the pleading or other document to be reformed. If the order is not obeyed, the court may order the document stricken.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 11. Form of briefs and other papers - duplication.

(1) Form of briefs, appendices, petitions, including petitions for writs, motions, and other papers. Briefs, appendices, petitions, motions, and other papers shall be produced by any standard printing, word processing, typewriting, or equivalent process capable of producing a clear black image on paper. Such paper shall be standard quality, opaque, unglazed, recycled paper.

(2) Typeface and text style. Either a proportionately-spaced typeface of 14 points or more, or a monospaced typeface of no more than 10.5 characters per inch may be used in a brief, appendix, petition, motion, or other paper. A proportionately-spaced typeface has characters with different widths. A monospaced typeface has characters with the same advanced width. The brief's covers and the components of the brief excluded from the word count computation are exempt from the 14-point typeface requirement. Text shall be in roman, non-script text. Case names, headings, and signals may be underlined or in italics or in bold.

(3) Paper size, margins, and line spacing.

(a) All of the foregoing papers shall have pages not exceeding 8½ by 11 inches with margins on the right side and left side and on the top and bottom not less than 1 inch wide, provided, however, that papers from the proceeding below (pleadings, findings of fact and conclusions of law, judgments, exhibits, and other like papers) may be:

(i) Reproduced in their original form, size, and print even though the papers exceed the foregoing size limitations; or

(ii) Reproduced in their original form, but in a reduced size and print on pages not exceeding 8½ by 11 inches even though the print thereon is less than the foregoing size limitations, provided that the print is legible.

(b) Papers produced by typewriter or an equivalent process shall be double spaced except that footnotes and quoted and indented material may be single spaced. Pages shall be bound or attached on the left margin and numbered. Parties are encouraged to print and photocopy briefs, motions, and other papers in duplex format.

(4) Calculations and length.

(a) Proportionately-spaced briefs. A principal brief shall not exceed 10,000 words and a reply brief or amicus brief shall not exceed 5,000 words. This includes reply briefs which also answer a cross-appellant's principal brief.

(b) Monotype or typewritten briefs or petitions. A principal brief prepared in a monospaced typeface shall not exceed 30 pages and a reply brief or amicus brief shall not exceed 14 pages. This includes reply briefs which also answer a cross-appellant's principal brief.

(c) Petitions filed under rule 14 shall not exceed 4,000 words or 12 pages.

(d) Exclusions. The word and page limits under sections (4)(a), (b), and (c) of this rule do not include table of contents, table of citations, certificate of service, certificate of compliance, or any appendix containing statutes, rules, regulations, and other pertinent matters.

(e) Certificate of compliance. A brief must be accompanied by certification of compliance which states the document's line spacing and states either: (1) the document is proportionately spaced, together with the typeface, point size, and word count; or (2) the document uses a monospaced typeface, together with the number of characters per inch and word count, or, the number of counted pages, pursuant to section (4)(b) or (c) of this rule. A party preparing this certificate may rely on the word count of the word processing system used to prepare the brief. The certification is not included in calculating the document's length.

(5) Duplication. All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on paper, but not including ordinary carbon copy, provided that in each instance the duplication shall conform to the requirements of this rule. All papers and attachments thereto must be legible.

(6) First page and cover of briefs.

(a) The cover of the brief of the appellant shall be blue; the cover of the brief of the party filing the opening brief in a case involving a question certified to the supreme court pursuant to rule 15 shall be yellow; that of the appellee, salmon; that of an intervenor or amicus curiae, green; and that of any reply brief, gray. For recycling purposes, pastel colors shall be used for both brief covers and page separators; and stiff, waxy, or slick-surfaced covers shall not be used.

The cover of the appendix, if separately printed, shall be white. Transparent or plastic covers shall not be used, and tabs shall be plain paper and not plastic-coated.

(b) There must be included on the cover page and first page of briefs the following:

(i) The title of this court;

(ii) The cause number in this court (or a blank for documents first filed);

(iii) If any, the title of the case from the tribunal in which the case originated or from which an appeal is taken, adding the designations of the parties set forth in rule 2, and the name, the venue of the tribunal, and the judge in which the case originated or from which an appeal is taken;

(iv) If the case is an original proceeding, the names of the parties, adding the designations of the parties set forth in rule 2;

(v) The names, mailing addresses, telephone, fax numbers, and email addresses (if any) of respective counsel for the parties, identifying the party counsel represents, and that same information if the party is proceeding without counsel; and

(vi) The title of the document being filed, such as "Appellant's Brief," "Petition for Supervisory Control," or "Motion to Dismiss Appeal."

(7) First page of other papers. The first page of other papers shall contain the information required by section (6)(b) i, ii, iv, and v of this rule.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 12. Briefs.

(1) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(a) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited;

(b) A statement of the issues presented for review. Parties are encouraged to limit the number of issues to 4 or fewer;

(c) A statement of the case. The statement shall first indicate briefly the nature of the case and its procedural disposition in the court below. Only that procedural background which is relevant to the issue or issues raised shall be included in the statement of the case;

(d) A statement of the facts relevant to the issues presented for review, with references to the pages or the parts of the record at which material facts appear;

(e) A statement of the standard of review as to each issue raised, together with a citation of authority;

(f) A summary of the argument. The summary shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief and not be a mere repetition of the argument headings.

(g) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on;

(h) A short conclusion stating the precise relief sought; and

(i) An appendix that includes the relevant judgment, order(s), findings of fact, conclusions of law, jury instruction(s), ruling(s), or decision(s) from which the appeal is taken together with any written memorandum or rationale of the court, and those pages of the transcript containing any oral ruling in support. This appendix shall include a table of contents and plain paper tabs and may be a separately-bound document if the volume of the required attachments makes this necessary.

(2) Answer brief of the appellee. The answer brief of the appellee shall conform to the requirements of section (1)(a) through (h) of this rule, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(3) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. The reply brief must be confined to new

matter raised in the brief of the appellee. Only one reply brief may be filed, regardless of the number of appellees' briefs filed, and the rule 11(4) word or page limit for reply briefs applies even if the reply brief also contains a response to a cross-appeal. No further briefs may be filed except with leave of court.

(4) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below, shall be deemed the appellant for the purposes of this rule and rules 11 and 13, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall conform to the requirements of section (1)(a) through (i) of this rule. The cross-appellant shall file the cross-appeal brief combined in a single document with the answer brief, the appellant shall file the cross-appeal answer brief combined in a single document with the reply brief, and the cross-appellant shall file the cross-appeal reply brief within 14 days after service of the cross-appeal answer brief. Word limitations in combined briefs that raise or respond to cross-appeals shall not exceed those word limitations set forth in rule 11(4).

(5) Appendix. If desired, and in addition to the documents required under subsection (1)(i) of this rule, the appellant or the appellee may file a separate appendix containing additional documents or materials that are referenced in the brief or may, otherwise, be of assistance to the supreme court in its review of the brief. The parties may file a joint appendix. If separate appendices are filed, materials included in the appellant's appendix should not be duplicated in the appendix of the appellee. Given that the court has available to it the entire record, parties are advised that a supplemental appendix is not required. If one is filed, it shall include only those documents essential to the arguments. Any supplemental appendix shall include a table of contents, and each document shall be tabbed using plain paper tabs and not plastic-coated tabs.

(6) Notice of supplemental authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the supreme court, by "Notice of Supplemental Authority," with copies to all parties, setting forth the citation(s) without argument. The notice shall reference either the page of the brief or the point argued orally to which the citation(s) pertain.

(7) Brief of amicus curiae. A brief of an amicus curiae may be filed only upon invitation or leave of the supreme court granted on motion. A motion for leave shall identify the interest of the applicant, state the reasons why a brief of an amicus curiae is desirable, identify the party whose position amicus supports, provide the date upon which the brief can be filed, and indicate whether the other party consents to the request.

(8) References in briefs to parties. Subject to the requirements of rule 10(6) and rule 14(5)(b)(v), references to parties by formal designations such as "appellant," "appellee," "petitioner," "respondent," "plaintiff," or "defendant" are discouraged and the use of names or descriptive terms such as "John," "Sue," "the employer," "the taxpayer," "father," or "mother" are encouraged.

(9) References in briefs to the record. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e.g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(10) Over-length and supplemental briefs and costs. Motions to file over-length and supplemental briefs will not be routinely granted. Motions to file such briefs must be supported by an affidavit demonstrating extraordinary justification.

(11) Disk copy of briefs and appendices. Original briefs filed under this rule and under rule 14 shall include a digital copy prepared on a Read Only Digital Video Disk (DVD-R), in Portable Document Format (PDF) which shall be redacted of all confidential information in accordance with rule 10(7). This rule shall not apply to hand-written briefs or to those typed on a typewriter. Failure to include the DVD-R with the original brief shall not be grounds for dismissal or for refusal to file the brief. In accordance with rule 10(7)(g), the appendix or attachments submitted on the DVD-R need not be redacted.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015.

Rule 13. Filing and service of briefs.

(1) Time for filing briefs. The appellant shall serve and file a brief within 30 days after the date on which the record is filed. The appellee shall serve and file an answer brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee. If a cross-appeal is filed and appellant desires to file a reply brief in appellant's appeal, appellant shall serve and file a combined reply brief in appellant's appeal and an answer brief in the cross-appeal within 30 days after service of the brief of the cross-appellant.

(2) Number of copies to be filed and served. For briefs containing no confidential information, a signed original and 9 copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the supreme court, and 1 copy of each brief shall be served on each party. For briefs containing confidential information, a signed unredacted original filed under seal and 7 copies of the unredacted original shall be filed along with 2 copies of the redacted brief for public access. 1 copy of the redacted and 1 copy of the uredacted versions of the brief shall be served on each party. The clerk of the supreme court will not accept a brief for filing unless it is accompanied by a certificate of service as required by rule 10. If a separate appendix is filed as allowed under rule 12(5), an original and 7 copies of the appendix shall be filed.

(3) Consequences of failure to file briefs. If an appellant fails to file a brief within the time provided by this rule, or within any extended time, an appellee may move for dismissal of the appeal.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 14. Jurisdiction - extraordinary writs - supervisory control - original proceedings.

(1) Jurisdiction. The supreme court is an appellate court but is empowered by Article VII, Sections 1 and 2 of the Constitution to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction.

(2) Extraordinary writs. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review or certiorari, mandate, quo warranto, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the applicable sections of the Montana Code Annotated for the conduct of such or analogous proceedings and by these rules.

(3) Supervisory control. The supreme court has supervisory control over all other courts and may, on a case-by-case basis, supervise another court by way of a writ of supervisory control. Supervisory control is an extraordinary remedy and is sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:

(a) The other court is proceeding under a mistake of law and is causing a gross injustice;

(b) Constitutional issues of state-wide importance are involved;

(c) The other court has granted or denied a motion for substitution of a judge in a criminal case.

(4) Original proceedings. An original proceeding in the form of a declaratory judgment action may be commenced in the supreme court when urgency or emergency factors exist making litigation in the trial courts and the normal appeal process inadequate and when the case involves purely legal questions of statutory or constitutional interpretation which are of state-wide importance.

(5) How commenced. The proceedings referred to in sections (2), (3), and (4) of this rule shall be commenced as follows:

(a) Where and when filed. A petition may be made to the supreme court at any time. The petitioner's petition and all supporting documents shall be filed with the clerk of the supreme court.

(b) What to contain. The petition must set forth:

(i) The facts which make it appropriate that the supreme court accept jurisdiction;

(ii) The particular legal questions and issues anticipated or expected to be raised in the proceeding;

(iii) In summary fashion, the arguments and authorities for accepting jurisdiction and pertaining to the merits of the particular questions and issues anticipated or expected to be raised. No separate memorandum of law or brief shall be filed with the application; and

(iv) To the extent they exist, as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document proceeding, or court minute referred to in the petition or which is necessary to make out a prima facie case or to substantiate the petition or conclusion or legal effect.

(v) In any proceeding regarding abused or neglected children under Title 41, Chapter 3 or in any proceeding under Title 40, Chapter 6, part 1 (Uniform Parentage Act); Title 41, Chapter 5 (Youth Court Act); Title 42 (Adoption); Title 52, Chapter 3, part 8 (Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act); Title 53, Chapter 20 (Developmental Disabilities); Chapter 21 (Mentally Ill); or Chapter 24 (Alcoholism and Drug Dependence); or Title 72, Chapter 5, part 3 (Guardians of Incapacitated Persons), only the initials of the child, parent(s) or individual party(ies), as the case may be, may be used.

(6) Notice - writs. If a petition for an extraordinary writ or for a writ of supervisory control is filed with respect to any proceeding pending in the district court, the petition and any exhibits relating to a ruling of the district court must be served upon the district judge against whose ruling it is directed and upon all parties. Such petition shall include, in its title, the name of the district judge and the judicial district from which the ruling was issued.

(7) Procedure on filing.

(a) Upon the filing of a petition, the supreme court may order that a summary response be filed, or the supreme court may dismiss the petition without ordering a response. A summary response shall summarize the arguments and authorities for rejecting jurisdiction and shall otherwise comply with (5)(b)(ii) and (iii) and, to the extent necessary, (5)(b)(iv) of this rule. No separate memorandum of law or brief shall be filed with the summary response. No reply memorandum shall be filed to the summary response, except on order of the supreme court.

(b) In the event the supreme court orders a summary response, the supreme court also may order more extensive briefing, order oral argument, issue any other writ or order deemed appropriate in the circumstances, or dismiss the petition.

(c) The supreme court may order a stay of further proceedings in the other court, pending the supreme court's disposition of the petition.

(8) Oral argument. If oral argument is ordered it shall be conducted in the same manner as in the argument of appeals.

(9) Number of copies - format - word limitations.

(a) A signed original and 9 copies of any petition filed under this rule and any response thereto shall be filed with the clerk of the supreme court.

(b) All filings made pursuant to section (5)(a) of this rule shall conform to the requirements of rule 11, except that neither the text of the petition nor any response shall exceed 4,000 words if proportionately spaced or 12 pages if prepared in monospaced typeface or if typewritten.

(c) Exhibits shall be preceded by a table of contents and exhibits shall be separated by colored page separators.

(10) Briefs. In those cases in which the supreme court orders more extensive briefing, each party shall, unless otherwise ordered, prepare, file, and serve briefs in conformance with rule 12. All briefs shall be filed and served according to the time schedule set forth in the supreme court's order.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 15. Certification of questions of law.

(1) Definitions. In this rule:

(a) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(b) "Tribe" means a tribe, band, or village of native Americans which is recognized by federal law or formally acknowledged by a State.

(2) Power to certify. The supreme court of this State, on the motion of a party to pending litigation or its own motion, may certify a question of law to the highest court of another State, or of a tribe, or of Canada, a Canadian province or territory, Mexico, or a Mexican state, or a federal court, if:

(a) The pending litigation involves a question to be decided under the law of the other jurisdiction;

(b) The answer to the question may be determinative of an issue in the pending litigation; and

(c) The question is one for which an answer is not provided by a controlling appellate decision, constitutional provision, or statute of the other jurisdiction.

(3) Power to answer. The supreme court of this State may answer a question of law certified to it by a court of the United States or by the highest court of another State or of a tribe, or of Canada, a Canadian province or territory, Mexico, or a Mexican state, if:

(a) The answer may be determinative of an issue in pending litigation in the certifying court; and

(b) There is no controlling appellate decision, constitutional provision, or statute of this State.

(4) Power to reformulate question. The supreme court of this State may reformulate a question of law certified to it.

(5) Certification order, record. The court certifying a question of law to the supreme court of this State shall issue a certification order and forward it to the supreme court of this State. Before responding to a certified question, the supreme court of this State may require the certifying court to deliver all or part of its record to the supreme court of this State.

(6) Contents of certification order.

(a) A certification order must contain:

(i) The question of law to be answered;

(ii) The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(iii) A statement acknowledging that the supreme court of this State, acting as the receiving court, may reformulate the question; and

(iv) The names and addresses of counsel of record and parties proceeding without counsel.

(b) If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

(7) Notice, response. The supreme court of this State, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

(8) Procedures. After the supreme court of this State has accepted a certified question, the rules and statutes governing briefs, arguments, and other appellate procedures govern proceedings. Procedures for certification from this State to a receiving court are those provided in the rules and statutes of the receiving forum.

(9) Opinion - order. The supreme court of this State shall state in a written opinion the law answering the certified question or may by order determine that the certified question was improvidently accepted. The clerk of the supreme court shall send copies of the opinion or order to the certifying court and the parties.

(10) Cost of certification. Fees and costs are the same as in civil appeals filed with the clerk of the supreme court of this State and must be equally divided between the parties unless otherwise ordered by the certifying court.

(11) Severability. If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

(12) Uniformity of application and construction. This rule shall be applied and construed to effectuate its general purpose to make uniform law with respect to the subject of the rule among States adopting it.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 16. Motions.

(1) Form and content. Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief with the clerk of the supreme court. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. Failure to include this statement may result in denial of the motion. If a motion is supported by affidavits or other papers, whether required by these rules or otherwise, or submitted in a party's discretion, they shall be served and filed with the motion. At the time of filing a procedural motion, counsel shall present a proposed order, together with sufficient copies for service upon all parties, as well as stamped envelopes addressed to all parties. The supreme court may authorize disposition of motions for procedural orders by a single justice.

(2) Response. Any party may file a response in opposition within 11 days after service of the motion, or within such time as the supreme court may direct.

(3) Limitations and other requirements. The motion, including supporting argument and authority, shall be submitted in a single document limited to 1,250 words or less if proportionately spaced or 5 pages of text if prepared in monospaced typeface or if typewritten. The motion shall set forth a succinct statement of the issue or problem, a brief argument including a list of supporting authority and a parenthetical statement of the holding or rule of any case cited, and a succinct statement of the relief sought. The response shall comply with the format and word or page limitations of this section. No reply shall be filed.

(4) Motions to voluntarily dismiss. Except for an Anders motion pursuant to section 46-8-103(2), a party's motion to voluntarily dismiss that party's cause, appeal, or cross-appeal must be signed by both the moving party and that party's counsel.

(5) Motions to dismiss by stipulation. A cause, appeal, or cross-appeal may be dismissed by the supreme court upon stipulation signed by counsel of record and parties not represented by counsel.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 17. Oral arguments.

(1) Standards. Oral argument will be allowed upon order of the supreme court. All cases not designated for oral argument will be decided on the basis of the briefs and the record on appeal.

(2) Order regarding argument. The supreme court shall, by order, schedule and specify the date, time, and place for the oral argument.

(3) Time allowed for argument. The supreme court's order granting oral argument will designate the amount of time each party will be allowed at oral argument.

(4) Order and content of oral argument. The appellant or applicant is entitled to open and conclude the argument. Closing argument shall be limited to rebuttal of appellee's or respondent's argument.

(5) Cross and separate appeals. If there is a cross-appeal, rule 12(4) determines which party is the appellant and which is the appellee for purposes of oral argument. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(6) Use of physical exhibits at argument.

(a) Use of physical exhibits and enlargements during oral argument is distracting to the supreme court and is discouraged.

(b) Handouts are permissible provided there are sufficient copies for members of the supreme court and opposing counsel.

(c) Any physical exhibit, handout, or enlargement that attempts to supplement the briefs with additional arguments shall not be permitted. If opposing counsel objects to a physical exhibit, enlargement, or handout, counsel may make an objection on the record at an appropriate time.

(7) Arguments recorded. Oral arguments are electronically recorded. Absent a recusal, a justice not able to attend oral argument will participate in the supreme court's deliberations after listening to the electronic recording.

(8) Miscellaneous. The supreme court, sua sponte, or upon motion and good cause shown, may direct that oral argument times be extended or shortened; that the order or designation of parties arguing be modified; or that amicus curiae argue. Normally, any time granted to amicus curiae for oral argument will be subtracted from the time allotted to the party whose argument the amicus supports. Amicus curiae seeking leave to present oral argument must indicate whether such party consents to the motion.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, Feb. 17, 2015, eff. October 1, 2015.

Rule 18. Media access to court proceedings.

(1) Media coverage.

(a) Provided that the orderly procedures of the supreme court are not impaired or interrupted, the media is welcome to record and photograph, or broadcast by radio or television or other means, the oral arguments of the supreme court.

(b) No person or organization will have exclusive access to a proceeding in the courtroom. The chief justice will advise media outlets if pool coverage is necessary.

(2) Equipment.

(a) Broadcast media should arrive at least 30 minutes prior to oral argument to begin setting up equipment. All equipment must be in place and tested 15 minutes in advance of the time scheduled for the oral argument.

(b) The chief justice will determine locations for all video cameras, still cameras, and audio equipment within the courtroom.

(c) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless specifically approved by the supreme court.

(d) Handheld tape recording devices may be used so long as the device can be positioned so as not to obstruct or impair the proceedings.

(e) Cellular telephones, alarms, pagers, or other sound-producing devices shall be turned off at all times when the supreme court is in session.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 19. Relief.

(1) Dispositions. Dispositions are as follows:

(a) Affirm. The supreme court's decision to uphold a decision of the district court constitutes an affirmance of that portion of the judgment or order of the district court from which the party took the appeal.

(b) Reverse. The supreme court's decision to overturn or modify a decision of the district court constitutes a reversal of that portion of the judgment or order of the district court from which the party took the appeal.

(c) Remand. The supreme court's decision to overturn all or some part of the decision of the district court from which the party took the appeal may require that district court to apply the supreme court's ruling in further proceedings consistent with the supreme court's decision.

(2) Dismissals. Unless otherwise ordered, the supreme court's dismissal of an appeal or cross-appeal is with prejudice and constitutes the final judgment of the supreme court. In the event the supreme court dismisses the appeal or cross-appeal, each party shall bear its own costs unless otherwise stipulated by the parties or ordered by the supreme court.

(3) Costs.

(a) Costs on appeal. Costs on appeal will be awarded to the prevailing party unless otherwise specifically provided by the supreme court in its decision. Taxable costs include costs of reproducing briefs and necessary appendices, costs incurred in transmission of the record, cost of the reporter's transcript if necessary for the determination of the appeal, and the fee for filing the notice of appeal. In the event that a dispute arises over which party has prevailed, that dispute, as well as the matter of costs, shall be resolved by the district court.

(b) Costs in extraordinary writs and original proceedings.

(i) Costs in extraordinary writ proceedings will be awarded only in the supreme court's discretion when special circumstances warrant an award.

(ii) Any costs awarded to the petitioner or relator in proceedings seeking writs of supervisory control will be assessed against the real party in interest, rather than against the state, county, municipality, subdivision, judge, or justice.

(iii) Costs in original proceedings will be awarded to the prevailing party unless otherwise specifically provided by the supreme court in its decision.

(4) Interest on judgments. If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

(5) Sanctions. The supreme court may, on a motion to dismiss, a request included in a brief, or sua sponte, award sanctions to the prevailing party in an appeal, cross-appeal, or a motion or petition for relief determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial or reasonable grounds. Sanctions may include costs, attorney fees, or such other monetary or non-monetary penalty as the supreme court deems proper under the circumstances.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 20. Petitions for rehearing.

(1) Criteria for petitions for rehearing.

(a) The supreme court will consider a petition for rehearing presented only upon the following grounds:

(i) That it overlooked some fact material to the decision;

(ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or

(iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

(b) The clerk of the supreme court will not accept a petition for rehearing for filing if the supreme court orders that remittitur, peremptory writ, or judgment issue immediately.

(c) The clerk of the supreme court will not accept a petition for rehearing for filing after remittitur has issued or after the time for filing such a petition has expired in a proceeding filed under rule 14.

(d) Absent clearly demonstrated exceptional circumstances, the supreme court will not grant petitions for rehearing of its orders disposing of motions or petitions for extraordinary writs.

(e) Petitions for rehearing will not be argued orally.

(2) Timing.

(a) A party must file and serve a petition for rehearing within 15 days after the supreme court decision has been filed, unless the supreme court expressly shortens or enlarges the time by order.

(b) A party opposing the petition for rehearing shall have 15 days after the filing of the petition for rehearing in which to file and serve objections.

(c) Any motion for extension of time in which to file a petition for rehearing must be filed within the 15-day period for filing the petition for rehearing. The supreme court will grant extensions of time only upon a showing of unusual merit and in no event will grant an extension of time in excess of 15 days. The extension period will run from the date of the supreme court's order granting the extension.

(d) The clerk of the supreme court shall not accept reply briefs for filing.

(3) Length. The text of the petition for rehearing and objections thereto shall not exceed 2,500 words if proportionately spaced or 10 pages if prepared in monospaced typeface or typewritten.

(4) Filing.

(a) The parties shall file a signed original and 7 copies of the petition for rehearing and objections thereto with the clerk of the supreme court.

(b) The petition for rehearing and objections thereto must contain a certificate of service on the opposing party.

(c) The petition for rehearing and objections thereto must contain a certificate verifying that the document's word count and words per page comply with section (3) of this rule.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 21. Remittitur.

(1) The clerk of the supreme court promptly shall notify each party of the supreme court's decision and provide a copy of the supreme court's decision.

(2) Remittitur shall issue upon the expiration of time for filing a petition for rehearing, unless the supreme court directs that it shall issue immediately upon its decision, and must be certified by the clerk of the supreme court to the clerk of the district court.

(3) In the event that the supreme court modifies its decision in response to a petition for rehearing, remittitur shall issue immediately upon the expiration of time for filing a petition for rehearing in response to the modified decision.

(4) In the event the supreme court denies a petition for rehearing, remittitur shall issue upon denial of the petition for rehearing.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 22. Stay of judgment or order pending appeal.

(1) Motion for stay in the district court.

(a) A party shall file a motion in the district court for any of the following relief:

(i) To stay a judgment or order of the district court pending appeal;

(ii) For approval of a supersedeas bond; or

(iii) For an order suspending, modifying, restoring, or granting an injunction pending appeal.

(b) If the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, obtain the district court's approval of a supersedeas bond which shall have 2 sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the district court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

(c) The district court retains the power to entertain and rule upon a motion filed pursuant to this rule despite the filing of a notice of appeal or the pendency of an appeal.

(d) The district court must promptly enter a written order on a motion filed under this rule and include in findings of fact and conclusions of law, or in a supporting rationale, the relevant facts and legal authority on which the district court's order is based. A copy of any order made after the filing of a notice of appeal must be promptly filed with the clerk of the supreme court.

(2) Motion in the supreme court.

(a) On the grant or denial of a motion for relief under section (1)(a) of this rule, a motion for relief from the district court order may be filed in the supreme court within 11 days of the date of entry of the district court order. The motion must:

(i) Demonstrate good cause for the relief requested, supported by affidavit;

(ii) Include copies of relevant documents from the record;

(iii) Include a copy of the district court's order issued pursuant to section (1)(d) of this rule; and

(iv) Not exceed 10 pages of text including the affidavit, but exclusive of the documents described in section (2)(a)(ii) and (iii) of this rule.

(b) Response or objection to motion.

(i) A response or objection to a motion filed under section (2) of this rule may be filed within 11 days of the filing of the motion.

(ii) The response or objection shall comply with section (2)(a)(i), (ii), and (iv) of this rule.

(3) In the interests of justice, the supreme court may grant, modify, or deny the relief requested under section (2) of this rule.

(4) Except in extraordinary circumstances supported by affidavit, motions under this rule which have not been filed in accordance with sections (1) and (2)(a) of this rule, and motions filed without prior notice to the opposing party, will be denied summarily.

(5) Security other than bond - stipulation of the parties.

(a) In all cases under this rule where supersedeas bond or other terms that secure the opposing party's rights are required, the court, in its discretion, may allow alternative forms of security other than a bond, when adequate equivalent security is provided and the appealing party can show that the judgment creditor's recovery is not in jeopardy.

(b) In all cases, the parties may by written stipulation waive the filing of security.

(6) Stay in a criminal case. Sections 46-20-204 and -205 govern stays in criminal cases.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 23. Undertaking for costs on appeal.

(1) The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of rule 24 apply to a surety upon a bond given pursuant to this rule.

(2) No undertaking for costs is required in appeals in criminal cases.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 24. Sureties.

(1) Surety's justification. A party may file an objection to the sufficiency of any bond or undertaking within 30 days after the filing of such bond or undertaking. The party filing the bond or undertaking, or the surety or sureties used by the party to file the bond or undertaking, shall file a response with the district court within 20 days after the service of notice of any objection. The failure of the party filing the bond or undertaking, or its surety or sureties, to file a response to the objection, shall dissolve any stay preventing the execution of the judgment or order from which the party filed the appeal.

(2) Enforcement of surety's liability. The provisions of sections 25-1-402, 25-13-105, 33-26-101, 33-26-102, and 72-31-101 apply to cases on appeal that require an undertaking or supersedeas bond with a surety.

(3) Proceedings against a surety. If a party gives security in the form of a bond or stipulation or other undertaking with 1 or more sureties, each surety submits to the jurisdiction of the district court and the supreme court and irrevocably appoints the district court's clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court or the supreme court prescribes may be served on the clerk of the district court, who promptly must mail a copy to each surety whose address is known.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 25. Substitution of parties in civil cases - acts of personal representatives or guardians when appointment vacated.

(1) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court in a civil case, the personal representative of the deceased party may be substituted as a party on motion filed by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance

with the provisions of rule 10. If the deceased party has no representative, proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the supreme court in accordance with this rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by such party's personal representative or, if there is no personal representative, by such party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected in the supreme court in accordance with this rule.

(2) Substitution for other causes. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in section (1).

(3) Public officers - death or separation from office. When a public officer is a party to an appeal or other proceeding in the supreme court in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(4) Acts of personal representative or guardian. When the judgment or order appointing a personal representative or guardian is reversed on appeal, for error and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such personal representative or guardian, if such personal representative or guardian has qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 26. Extension of time.

(1) Extension of time - generally. Except as provided in section (2) of this rule, the supreme court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances. Within the text of each motion requesting an extension of time submitted to the supreme court for its consideration, except for those involving the attorney general and an incarcerated self-represented litigant, counsel shall note that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. Failure to include this statement may constitute grounds for denial of the motion. All motions and orders for extension of time shall comply with rule 16 and shall include a date certain on or before which date the act for which an extension of time is requested must be performed. In all cases except those addressed in section (2) of this rule, a party may move for and be granted one 30-day extension of time in which to file a brief required or allowed to be filed under these rules. The clerk of the supreme court is authorized to act on any such motions for 30-day extension of time which are unopposed, and also on any such motions involving the attorney general and an incarcerated self-represented litigant. Any second or subsequent motion for extension of time to file a brief shall meet the requirements of section (2) of this rule.

(2) Extensions of time - filing briefs in appeals of proceedings regarding abused or neglected children, parenting plans, and motions for second or subsequent extensions. There shall be a presumption against granting motions for extension of time to file briefs. Any motion for extension of time to file a brief in the referenced cases may be granted only upon written motion supported by a showing of diligence and substantial need. Such a motion shall be filed at least 7 days before the expiration of the time prescribed for filing the brief, shall comply with rule 16, and shall be accompanied by an affidavit stating:

(a) When the brief is due;
(b) When the brief was first due;
(c) The length of the requested extension;
(d) The reason an extension is necessary;

(e) An explanation establishing that movant has exercised diligence and has substantial need for the extension, and that the brief will be filed within the time requested. An affidavit setting forth a conclusory statement as to the press of business will not constitute a showing of diligence and substantial need and will subject the motion to summary denial; and

(f) Whether any other party objects to the request.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011; amd. Sup. Ct. Ord. No. AF 07-0016, November 26, 2019, eff. January 1, 2020.

Rule 27. Notice involving constitutional questions where the state is not a party.

Irrespective of the requirements of M. R. Civ. P. 5.1, a party who challenges the constitutionality of any act of the Montana legislature in any action, suit, or proceeding in the supreme court to which neither the state nor any agency or any officer or employee thereof, in the officer's or employee's official capacity, is a party, must give notice to the supreme court and to the Montana attorney general of the existence of the constitutional issue. This notice must be in writing, specify the section of the Montana Code Annotated or chapter of the session law to be construed, and must be given no later than 11 days from the date that the notice of appeal or notice of cross-appeal is filed or the date of filing of an original proceeding in the supreme court. No later than 20 days from the date that the notice of constitutional challenge is filed, the attorney general shall notify the supreme court and all parties in writing as to whether the attorney general will intervene in the appeal on the constitutional issue.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, May 6, 2009, eff. October 1, 2009; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 28. Minutes of supreme court.

The clerk of the supreme court shall attest the minutes of the supreme court as true and correct.

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 29. Suspension of the rules.

(1) Application for suspension. In the interest of expediting decision on any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in section (2) of this rule, suspend the requirements or provisions of these rules on application of a party supported by affidavit, and may order proceedings in accordance with its direction.

(2) Exceptions. This rule may not be invoked with respect to proceedings governed by rule 7. Any request for an out-of-time appeal shall be governed solely by rule 4(6).

History: En. Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. October 1, 2007; amd. Sup. Ct. Ord. No. AF 07-0016, April 26, 2011, eff. October 1, 2011.

Rule 30. Judicial waiver appeals.

(1) Scope. This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 16 to waive parental consent to an abortion, pursuant to Title 50, Chapter 20. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule.

(2) Notice of appeal.

(a) A minor may appeal an order denying or dismissing a petition to waive parental consent by filing a notice of appeal with the clerk of the supreme court. The notice of appeal may be filed in person, by mail, or by fax. If a transcript or written order is available, it should be attached to the notice of appeal, but such notice shall not be defective if it does not include such transcript or order.

(b) If a notice of appeal is incorrectly filed in a youth or district court, the clerk thereof shall immediately notify the clerk of the supreme court of such filing, and shall transmit a copy of the notice of appeal by fax or e-mail for filing with the supreme court.

(c) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(d) Blank notice of appeal forms and copies of these rules will be available at all court locations and will be mailed, emailed, or faxed to a minor upon request.

(e) No filing fees or fee for any service may be required of a minor who files an appeal under this provision.

(3) Record on appeal; standard of review. A youth court that conducts proceedings for judicial waiver of consent shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained. The record on appeal consists of the confidential record of the youth court, including all papers and exhibits filed in the youth court, the written findings and conclusions of the youth court, and, if available, a recording or transcript of the proceedings before the youth court. If the appellant has counsel, counsel shall serve the clerk of the youth court with a copy of the notice of appeal, request the record from the clerk of the youth court, and arrange for expedited preparation of the transcript immediately upon filing the notice of appeal. If the appellant does not have counsel, the clerk of the supreme court shall request the record immediately upon receiving notice that a self-represented minor has filed a notice of appeal, and the clerk of the youth court shall arrange for expedited preparation of any transcript directly with the court reporter. Upon receiving a request for the record from counsel for the appellant or from the clerk of the supreme court, the clerk of the youth court shall forthwith transmit the record to the supreme court by fax, e-mail, overnight mail or in another manner that will cause it to arrive within 48 hours, including weekends and holidays, after the youth court's receipt of the request for the record.

(4) Brief. A brief is not required. However, the minor may file a memorandum in support of the appeal within 48 hours, including weekends and holidays, after filing the notice of appeal.

(5) Disposition. The supreme court may designate a panel of five or more of its members to consider the appeal. The supreme court shall review the decision of the youth court de novo. The supreme court shall enter an order stating its decision within 72 hours, not including weekends and holidays, after the record referred to in (3) is filed. The supreme court shall issue an opinion explaining the decision as soon as practicable following entry of the order.

(6) Confidentiality.

(a) Documents, proceedings, and audio or video recordings in an appeal under this rule are sealed. All persons are strictly prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, and from disclosing this information to any person. The court shall not release the name of, or any other identifying information concerning, a minor who files a judicial waiver appeal.

(b) All statistical and general information that the court system may have concerning judicial waiver appeals is confidential, except the number of appeals filed, granted, and denied statewide each year is public information.

(7) Attorney. If the minor is not represented by an attorney, the clerk of the supreme court shall appoint the office of the state public defender to represent the minor in the appeal. If counsel was assigned to represent the minor in the youth court, the appointment continues through the appeal. All counsel shall immediately be served with copies of the Court's order by fax or e-mail. In the event a minor waives the right to have counsel appointed on appeal, then notice of the court's order will be served upon her at the address or location she has provided to the clerk of the supreme court. The minor or her counsel shall be provided a certified copy of the order upon request.

(8) Filing defined. For purposes of this rule only, an appeal is deemed filed at the time and on the date it is received by the clerk of the supreme court.

(9) Special rule for interpreting time requirements. If the end of a time limit set out in this rule falls upon a weekend or holiday, then the time limit is extended to noon on the next business day.

History: En. Sup. Ct. Ord. No. AF 07-0016, June 27, 2013, eff. June 27, 2013.

Appendix of Forms

Form 1

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.________
(To be assigned by the Clerk of the Supreme Court)

____
Attorney for__________________________
Address_______________________________
Phone_________________________________
Fax___________________________________
E-mail________________________________

______________________________,
Plaintiff/Petitioner and
☐Appellant or ☐Appellee,
v. NOTICE OF APPEAL

______________________________,
Defendant/Respondent and
☐Appellant or ☐Appellee.

NOTICE is given that __________, the Appellant above-named and who is the __________(plaintiff/petitioner/or other designation) in that cause of action filed in the __________ Judicial District, in and for the County of __________ as Cause No.______, hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the ____ day of ____________, 20____.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal ____is/is not___ subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being sought _____is/is not_____ less than $5,000.

2. That this appeal _____is/is not____ an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto as Exhibit "A."

3. That all available transcripts of the proceedings in this cause _____have been/have not been ____ ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

4. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this ______day of ______________, 20___.

____
Attorney for__________________________

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript will be ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of the Clerk of the District Court, each court reporter, and each attorney or party served)

Dated this ___ day of __________, 20___.

____
Name

____
Address

____
Title

Form 1A

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.__________

____
Attorney for______________________
Address______________________
Phone______________________
Fax______________________
E-mail______________________

______________________,
Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.

______________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

NOTICE OF A CHALLENGE TO THE CONSTITUTIONALITY OF AN ACT OF THE MONTANA LEGISLATURE

Notice is hereby given to the Supreme Court and to the Montana Attorney General that, in this action, the undersigned challenges the constitutionality of an act of the Montana legislature, namely: ____. Neither the state nor any agency or any officer or employee thereof is a party to this action in the officer's or employee's official capacity.

This notice is given within 11 days of the filing of the notice of appeal, as required by M. R. App. P. 27.

Dated this ____ day of __________, 20__.

____
Attorney for______________________

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing upon the Attorney General for the State of Montana, each attorney of record, and each party not represented by an attorney in the above-referenced action, as follows:

(list name and address of the Attorney General and each attorney or party served)

Dated this ___ day of ________, 20___.

____
Name

____
Address

____
Title

Form 2

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No.__________

____
Attorney for______________________
Address______________________
Phone______________________
Fax______________________
E-mail______________________

______________________,
Plaintiff/Petitioner,
☐ Appellant or ☐ Appellee, and
☐ Cross-Appellant or ☐ Cross-Appellee,

v. NOTICE OF CROSS-APPEAL

_______________________________,

Defendant/Respondent,
☐ Appellant or ☐ Appellee, and
☐ Cross-Appellant or ☐ Cross-Appellee.

NOTICE is given that _______________ cross-appeals to the Supreme Court of the State of Montana from the final judgment or order entered in Cause No. _______ in the __________ Judicial District, in and for the County of ____________, on the ____day of __________, 20___.

THE CROSS-APPELLANT FURTHER CERTIFIES:

1. That this cross-appeal ____is/is not___ subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being sought ____is/is not____ less than $5,000.

2. That this cross-appeal _____is/is not____ an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto as Exhibit "A."

3. That all available transcripts of the proceedings in this cause involving the issue(s) cross-appealed ____have been/have not been____ ordered from the court reporter contemporaneously with the filing of this notice of cross-appeal. If all available transcripts have not been ordered, that Cross-Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

4. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this ______day of _____________, 20___.

____
Attorney for___________________

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF CROSS-APPEAL with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing NOTICE OF CROSS-APPEAL upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript will be ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of the Clerk of the District Court, each court reporter, and each attorney or party served)

Dated this ___ day of _________, 20___.

____
Name
____
Address
____
Title

Form 3

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.__________

_______________________________,

Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.

MOTION AND AFFIDAVIT
TO PROCEED ON APPEAL WITHOUT
PAYMENT OF FILING FEE

_______________________________,

Defendant/Respondent and
☐Appellant or ☐Appellee.

I move this Court to proceed without payment of the filing fee in this cause, and I submit this Affidavit in support of my motion.

I, ______________________________, being first duly sworn, depose and say that I am the ____________ (designation of party) in the above-entitled cause; that in support of my application to proceed on appeal without being required to pay the filing fee, I state that because of my financial condition I am unable to pay the filing fee; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

____

____

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? ____________________________

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. ____________________________

____

____

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. ____________________________

____

____

2. Have you received within the past 12 months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? If the answer is yes, describe each source of income and state the amount received from each during the past 12 months. ____________________________

____

____

3. Do you own any cash or checking or savings account? If the answer is yes, state the total value of the items owned. ____________________________

____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? If the answer is yes, describe the property and state its approximate value. ____________________________

____

____

5. List the persons who are dependent upon you for support and state your relationship to those persons. ____________________________

____

____

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

____

Subscribed and sworn to before me this _____day of ____________, 20___.

____

Notary Public for the State of Montana
Residing at ____________________
My Commission expires __________

SEAL

Form 4

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.__________

______________________________,

Plaintiff/Petitioner and

☐ Appellant or ☐ Appellee,
v.

NOTICE REQUIRING FILING
OF AMENDED NOTICE OF
APPEAL OR CROSS-APPEAL

______________________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

NOTICE of ____Appeal/Cross-Appeal____ was filed on ______________, 20___, in that cause of action filed in the __________ Judicial District, in and for the County of _______________, as Cause No. ______.

The notice does not contain the following required certification(s):

1. ___ That this matter ____is/is not____ subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being sought ___is/is not____ less than $5,000.

2. ____ That this matter _____is/is not_____ an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached to the notice of appeal/cross-appeal as Exhibit "A."

3. ____ That all available transcripts of the proceedings in this cause involving the issue(s) appealed _____have been/have not been_____ ordered from the court reporter contemporaneously with the filing of the notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

4. ____ That all available transcripts of the proceedings in this cause involving the issue(s) cross-appealed _____have been/have not been_____ ordered from the court reporter contemporaneously with the filing of the notice of cross-appeal. If all available transcripts have not been ordered, that Cross-Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of cross-appeal.

5. ____ That a copy of the notice of ____appeal/cross-appeal____ has been contemporaneously filed in the office of the Clerk of the District Court and served by mail on all attorneys of record and on all parties not represented by an attorney.

____ The notice of appeal/cross-appeal was not accompanied by the filing fee prescribed by statute or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3. PLEASE NOTE THAT THE NOTICE OF APPEAL/ CROSS-APPEAL WILL NOT BE FILED UNTIL THE FILING FEE IS PAID OR THE AFFIDAVIT FILED.

You are hereby directed to correct the above-checked deficiencies within 11 days of the date of this notice and to bring the notice into compliance with M. R. App. P. 4.

True copies of this notice have been provided to all attorneys of record and to all parties not represented by an attorney.

Dated this ____ day of __________, 20___.

____
Clerk of the Supreme Court

Form 5

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.__________

______________________________,
Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.

SELECTION OF MEDIATOR

______________________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

COME NOW the parties and advise that they have stipulated to and selected ______________________ as mediator for purposes of complying with the requirements of M. R. App. P. 7(4)(c).

Dated this ___ day of __________, 20___.

____
Attorney for Appellant

____
Attorney for Appellee

Form 6

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No.__________

_________________________________,
Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.
_________________________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

ORDER OF MEDIATOR APPOINTMENT

This appeal being subject to M. R. App. P. 7, and the parties having failed to jointly and timely select a mediator under M. R. App. P. 7(4)(c),

IT IS ORDERED that ______________________, whose name appears next on the list of attorneys desiring appointment as mediators for ☐ workers' compensation ☐ domestic relations ☐ money damages appeals which is maintained pursuant to M. R. App. P. 7(4)(e), is hereby appointed to conduct the mediation process required by M. R. App. P. 7(5); and

IT IS FURTHER ORDERED that the time periods set forth in M. R. App. P. 7(5)(d) shall run from the date of this order of appointment.

True copies of this order are being provided to counsel of record for the parties, or to the parties individually if not represented by counsel.

Dated this ___ day of __________, 20___.

____
Clerk of the Supreme Court

Form 7

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No.__________

_________________________________,
Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.
_________________________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

STATEMENT OF POSITION

A statement of position shall be 10 pages or less, double spaced. Transcript excerpts, items related to admissibility, and exhibits of record may be attached. The Judgment/Order from which appeal is taken must be attached. The statement of position must be submitted to the mediator and opposing counsel/parties in accordance with M. R. App. P. 7(5)(f).

A statement of position shall include:

(1) Issues on appeal and the manner in which each issue was preserved;
(2) Applicable standard of review for each issue;
(3) Analysis of each issue, statement of position, and citations of legal authority;
(4) Judgment/order appealed; and
*(5) Factors impacting settlement.

*A confidential submission may be filed separately with the mediator indicating factors impacting settlement as provided in M. R. App. P. 7(6).

Form 8

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.__________

__________________________________,
Plaintiff/Petitioner and
☐ Appellant or ☐ Appellee,
v.
__________________________________,
Defendant/Respondent and
☐ Appellant or ☐ Appellee.

MEDIATOR'S REPORT

As a result of the settlement conference, this case is

☐ **SETTLED**

☐ Settlement agreement to be prepared by ____________________ no later than ______________, 20__.

☐ Stipulation for dismissal to be filed within 15 days of the date of this order.

☐ **NOT SETTLED**

Dated this ___ day of __________, 20___.

____
Mediator

(File with the clerk of the supreme court and provide copies to the clerk of the district court and to the parties.)

Form 9

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF ______________
STATE OF MONTANA

__________________________________, Cause Number __________
Plaintiff/Petitioner
v.
__________________________________,
Defendant/Respondent.

NOTICE OF TRANSCRIPTS
DEEMED NECESSARY FOR APPEAL

NOTICE is given that ____________________________, the Appellant in the above-named case, hereby determines the following transcripts are necessary for appeal. **Please check only those transcripts required:**

( ) No transcripts are necessary
( ) Jury Voir Dire
( ) Opening Statements
( ) Closing Arguments
( ) Trial Proceedings (all testimony, in-chambers discussions, and jury verdict)
( ) Pre-Trial Proceedings (specify by description and date of proceeding)
____
____
( ) Post-Trial Proceedings
____
____
( ) Other (specify by description and date of proceeding)
____
____

( ) The following transcripts have been prepared previously and are deemed necessary on appeal, and appellant requests the court reporter(s) prepare such transcripts in the proper format for filing with the supreme court and service on Appellee(s) (specify by description and date of proceeding)

____

The court reporter(s) responsible for the preparation of these transcripts is/are

____

It is further certified that financial arrangements were made with the court reporter(s) before filing this Notice.

Dated this ___ day of ________, 20___.

____
Attorney for ____________

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF TRANSCRIPTS DEEMED NECESSARY FOR APPEAL with the Clerk of the District Court and that I have served true and accurate copies of the foregoing NOTICE OF TRANSCRIPTS DEEMED NECESSARY FOR APPEAL upon each attorney of record, each court reporter from whom a transcript has been ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of Clerk of the District Court, each court reporter, and each attorney or party served).

Dated this ___ day of ________, 20___.

____
Name

____
Address

____
Title

CHAPTER 22
MONTANA JUSTICE COURTS RULES OF CIVIL PROCEDURE
(Superseded. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990)

CHAPTER 23
MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE
Part 1 — Rules

Rule
1. Scope of rules.
2. Commencement of action.
3. Place of trial or venue.
4. Persons — jurisdiction — process — service.
5. Service and filing of pleadings and other papers, excluding summons.
6. Time.
7. Pleadings allowed.
8. Amendment of pleadings.
9. Motions and other papers.
10. Naming of parties to action.
11. Substitution of parties.
12. Joinder of claims and parties necessary for just adjudication.
13. Discovery.
14. Pretrial conferences.

15. Right to jury trial.
16. Failure to appear or proceed.
17. Costs.
18. Jury.
19. Order of trial.
20. Notice of trial.
21. Entry of judgment.
22. Relief from judgment.
23. Execution.
24. Appeal to district court.

Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Part 1
Rules

Rule 1. Scope of rules.

These rules govern the procedure in the justice or city courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. These rules must be construed and administered to secure the just, speedy, and inexpensive determination of every action. Parties should also consult the Montana Uniform Rules for the Justice and City Courts, and all statutory provisions relating to procedure in Montana's justice and city courts, including but not limited to Title 25, chapter 31 of the Montana Code Annotated.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 2. Commencement of action.

(a) A civil action is begun by filing a complaint with the justice or city court. A concise written statement of the cause of action is considered a complaint. A person as defined in Rule 4(A)(1) may file individually or through an attorney. All others, as defined in Rules (4)(A) 2, 3, 4, and 5, must file through an attorney. The individual or the attorney must sign the complaint. Other requirements for the complaint are set out in Rule 7.

(b) Filing Fees.

Before a complaint will be filed and an action commenced, the plaintiff must pay the filing fee specified by statute. However, indigent parties may request a waiver of this requirement as set forth in M.C.A. 25-10-404 and, if the waiver is granted, may proceed without prepaying the filing fee.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. and renum. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 3. Place of trial or venue.

A. Proper place of trial.

The proper place for the trial of an action is called "venue". There may be one or more proper place(s) for the trial of a particular action, and justice and city courts may have concurrent venue under these rules. The proper place for trial is determined by the type of case or the residence of the defendant. If application of this rule to a particular case produces more than one proper venue, the plaintiff may file the case in any one of the proper venues. If the plaintiff does not file in any proper venue, the defendant may move to dismiss the action under subsection B of this rule. If plaintiff does file in a proper venue, either party may move to change venue under subsection c of this rule.

(1) Residence of Defendant.

(a) Venue is always proper in the county (for justice court actions) or city (city court actions) where the Montana defendant, or any one of the Montana defendants, reside(s) at the time the complaint is filed.

(b) If no defendant resides in Montana at the time the complaint is filed, venue is proper in any county (justice court actions) or city (city court actions) in Montana.

(c) (i) A defendant which is a corporation is a Montana resident if it is incorporated in the state of Montana at the time the complaint is filed. The Montana Secretary of State maintains records of incorporation. If the defendant corporation is incorporated in Montana, it shall be deemed to be a resident of each county (justice court actions) or city (city court actions) in which it has a place of business at the time the complaint is filed.

(ii) For a corporate defendant which is not incorporated in Montana, venue is proper in any county or city in Montana.

(d) If there is more than one defendant, a venue that is proper for any defendant is proper for all defendants, even if that venue would not be proper for one of the defendants if sued alone. If an action with two or more defendants is brought in a venue which is not proper for any of the defendants, any of the defendants may move to dismiss the action, without prejudice, for improper venue under Rule 3B.

(2) Additional Proper Venues.

In addition to the county or city of a defendant's residence as set forth in subsection (1), venue is proper as follows:

(a) Actions based on contract or other obligation. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried in the county or city in which the contract or obligation must be performed. Unless the contract specifically provides otherwise, the place of performance of the contract or obligation is the county or city in which the payment was to be due or the act constituting the obligation was to be performed.

(b) Actions for damages for injury to person or property. When the action is for damages for injury to person or property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city where the injury was incurred.

(c) Actions for taking or recovery of personal property. When the action is for the recovery of personal property or its value or for damages for taking or detaining the personal property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city in which all or any part of the property is found, or in the county or city in which all or any part of the property was taken.

(d) Actions for forcible entry or unlawful detainer. An action for the recovery of the possession of real property may be commenced in the county or city in which all or any part of the real property affected by the action is situated.

B. Improper Place of Trial.

(1) Dismissal. When the county or city in which the complaint is filed is not the proper venue, and any party moves for dismissal because of the improper venue, the court must dismiss the complaint without prejudice. Any motion for dismissal for improper venue under this subsection must be made at least ten days before trial, or it is waived. A complaint dismissed because of improper venue may be refiled in another county or city upon the payment of the filing fee. If a complaint is filed in an improper venue and is subsequently dismissed under this subsection, the applicable statute of limitations stops running on the date the complaint is filed, and restarts thirty (30) days after the service on the opposing party of the order of dismissal.

(2) Consideration of Venue on Appeal. If a party moves to dismiss a complaint because of improper venue, and the motion is denied, the case shall continue through judgment.

C. Change of Venue.

(1) When change of venue permitted. At any time more than ten days before trial, any party may move for and the court may order a change in the place of trial when it appears to the satisfaction of the judge before whom the action is then pending:

(a) by affidavit of either party, that the judge is a material witness for either party;

(b) that, based on affidavit, a jury has been demanded and one or more of the part(y)ies cannot have a fair and impartial trial because of the bias or prejudice of the prospective jurors;

(c) that the judge is disqualified from acting pursuant to Supreme Court rule published at Title 3, chapter 1, part 8, M.C.A.; or

(d) that the judge is sick or unable to act.

(2) Where action to be transferred. When the court orders the place of trial to be changed, the action shall be transferred for trial to a court mutually agreeable to the parties or, if they do not agree, to the nearest appropriate court in which the judge agrees to accept the case.

(3) Papers to be transmitted. After an order has been made transferring the action or proceeding to another court for trial and on payment by the applying party of all accrued costs, the judge ordering the transfer shall immediately transmit to the judge of the court to which the trial is transferred the pleadings and all papers in the action, together with a certified transcript from the docket of the proceedings. The court to which the case is transferred must not charge any additional filing fee.

(4) Jurisdiction of transferee court. From the time the order changing the place of trial is made, the court to which the action or proceeding is transferred has the same jurisdiction over it as though it had been originally commenced in that court.

(5) Notice of time and place of trial — pleading. On receipt of the papers, pleadings, and transcripts, the judge of the court to which the action or proceeding is transferred shall issue a notice stating the time and place of the trial and mail the notice to the parties at least 10 days before the time fixed for trial. If the defendant has not filed an answer, the court shall order an answer to be filed within 10 days.

History: En. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 4. Persons — jurisdiction — process — service.

A. PERSON.

As used in this rule, the word "person", whether or not a United States citizen or resident of this state and whether or not organized under the laws of this state, includes:

(1) an individual, whether operating in the individual's own name or under a trade name;
(2) an individual's agent or personal representative;
(3) a corporation, business trust, estate, trust, partnership, or limited liability company;
(4) any two or more persons having a joint or common interest; and
(5) any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice or city court who reside or are found within the State of Montana.

(2) Acquisition of jurisdiction. A justice or city court may acquire jurisdiction over a person through service of process as provided in these rules, through the voluntary appearance in an action by a person, either personally or through an attorney or any other authorized officer, agent, or employee. Each defendant must be served separately.

C. PROCESS.

(1) Summons — issuance. Upon the filing of the complaint, the judge or the clerk shall issue a summons upon request of a plaintiff. Separate or additional summons must be issued, upon request, against any parties designated in the original action or against any additional parties who may be brought into the action.

(2) Summons — form. The summons must be directed to the defendant and signed by the judge or clerk and must contain:

(a) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties to the action;

(b) a direction that the defendant appear and file a written answer in the justice or city court within 20 days after service of summons and complaint, exclusive of the day of service, or such other period as may be specified by law, and serve a copy upon the plaintiff or the plaintiff's attorney;

(c) a statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint; and

(d) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

D. SERVICE OF PROCESS.

(1) By whom served.

(a) Service of all process must be made by a sheriff of the county where the party to be served is found, by a deputy, by a constable authorized by law, or by any other person 18 years of age or older who is not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual, other than a minor or an incompetent person, or upon a domestic or foreign corporation or partnership or other limited liability company by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 18-A, M.R.Civ.P., and a return envelope, postage prepaid, addressed to the sender. If an acknowledgment of service under this subsection is not received by the sender within 20 days after the date of mailing, service of the summons and complaint must be made by one of the persons specified in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and (3).

(ii) If the person served does not complete and return the notice and acknowledgment of receipt of summons and complaint within the 20-day period, the court shall order the person to pay the costs of the personal service unless good cause is shown.

(iii) The notice and acknowledgment of receipt of the summons and complaint must be signed and dated. Service of the summons and complaint is complete on the date the defendant signs the acknowledgment.

(2) Personal service within court's jurisdiction.

(a) The plaintiff shall furnish the person making service with all necessary copies.

(b) Service must be made:

(i) upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and complaint to the defendant personally or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, further notice as the statute requires must be given;

(ii) upon a minor, by delivering a copy of the summons and complaint to the minor and to the minor's guardian or guardian ad litem;

(iii) upon a person who has been adjudged of unsound mind by a court of this state or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there is one residing in this state appointed and acting under the laws of this state. If there is no guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind but has not been so adjudged by a court of this state, the party may be brought into court by service of process personally. The court may also stay any action pending against the person on learning that the person is of unsound mind.

(iv) upon a domestic corporation, partnership or other limited liability company, or a foreign corporation or partnership or other limited liability company established by the laws of any other state or country, that had a place of business within this state or was doing business in this state either permanently or temporarily at the time the claim for relief accrued:

(A) by delivering a copy of the summons and complaint to an officer, director, superintendent, managing or general agent, partner, or associate for the corporation, partnership, or association or by leaving the copy at the office or place of business of the corporation, partnership, or association within the state with the person in charge of the office;

(B) by delivering a copy of the summons and complaint to the registered agent of the corporation named on the records of the secretary of state or to any other agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney-in-fact is one designated by statute to receive service, any further notice required by statute must also be given;

(C) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then by leaving a copy of the summons and complaint at any office of the corporation, partnership, or limited liability company within this state with the person in charge of the office; or

(D) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy of the summons and complaint to a trustee for the corporation and to its stockholders or members.

(v) upon a city, town, school district, or public agency or board of such a public body, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department of the public body;

(vi) upon an estate, by delivering a copy of the summons and complaint to the personal representative of the estate;

(vii) upon a trust, by delivering a copy of the summons and complaint to any trustee thereof.

(c) (i) When a claim for relief is pending in a justice or city court of this state against any of the following persons, the party causing the summons to be issued shall exercise reasonable diligence to ascertain the last-known address of:

(A) a corporation organized under the laws of this state or a corporation organized under the laws of any other state or country that has filed a copy of its charter in the office of the secretary of state of Montana and that is qualified to do business in Montana;

(B) a corporation organized under the laws of any other state or country that is subject to the jurisdiction of the justice or city courts of this state under the provisions of Rule 4B, even though the corporation has never qualified to do business in Montana; or

(C) a national banking corporation that, through insolvency or lapse of charter, has ceased to do business in Montana and when none of the persons designated in Rule 4D(2)(b)(iv) can with the exercise of reasonable diligence be found within Montana.

(ii) Upon the filing with the justice or city court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within Montana, reciting the last-known address of any of those persons, or reciting that after the exercise of reasonable diligence no address for any of the persons could be found and after deposit with the justice or city court of the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, the judge shall issue an order directing process to be served upon the secretary of state or, if absent from the office, upon the deputy secretary of state. The affidavit is sufficient evidence of the diligence of inquiry made by the affiant if it recites that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry.

(iii) The judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(iv) The secretary of state shall mail a copy of the summons and complaint by certified mail with a return receipt requested to the last-known address of any of the persons designated in Rule 4D(2)(b)(iv) or, if no address is known and the person is a corporation not organized in Montana, to the secretary of state of the state in which the corporation was originally incorporated, if known, and the secretary of state shall make the return as provided under Rule 4D(5).

(v) When service is made upon the secretary of state, it is considered personal service on the corporation, and the secretary of state, or the deputy when the secretary of state is absent from the office, is hereby appointed agent of the corporation for service of process.

(vi) In an action in which due diligence has been exercised to locate and serve any of the persons designated in Rule 4D(2)(b)(iv), service is considered complete upon the corporation regardless of the receipt or advice of refusal of the addressee to receive the process mailed, as required by Rule 4D(5).

(vii) When the service of process is made as provided in this subsection (2)(c) and there is no appearance thereafter made by an attorney for the corporation, service of all other notices required by law to be served in the action may be served on the secretary of state.

(3) Other service. All process in any form of action must be served in the manner specified in this rule, with the exception that whenever a statute of this state or an order of the court made pursuant to this rule or a statute provides for the service of a notice or an order in lieu of summons upon a person, service must be made under the circumstances and in the manner prescribed by the statute or order and with the further exception that all persons are required to comply with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315 when the action pertains to the provisions of those sections.

(4) Service by publication — when permitted — effect — manner — proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under this rule may be served by publication only when the subject of the action is real or personal property in this state and:

(i) the defendant has or claims a lien or interest, actual or contingent, in the real or personal property; or

(ii) the relief demanded consists wholly or partially in excluding the defendant from any interest in the real or personal property.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree that will adjudicate any interest of the defendant in the status, property, or thing acted upon, but the court may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication — order for publication.

(i) Before service of the summons by publication is authorized in any case, there must be filed with the judge or court clerk of the justice or city court in which the action is commenced:

(A) a pleading setting forth a claim in favor of the plaintiff and against the defendant as provided in Rule 4D(4)(a); and

(B) upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating:

(I) that the defendant resides out of the state, has departed from the state, cannot after due diligence be found within the state, or is concealed to avoid the service of summons; or

(II) if the defendant is a domestic or foreign corporation, that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within the state; or

(III) if the defendant is an unknown claimant, that the plaintiff has made a diligent search and inquiry for all persons who claim or might claim any right or title to, estate or interest in, or lien or encumbrance upon all or any part of the property that is adverse to plaintiff's ownership or all persons who may cloud the plaintiff's title to the property, whether the claim or possible claim is present or contingent, including any right of dower, inchoate or accrued; and

(IV) that the plaintiff has specifically named as defendants in the action all persons whose names can be ascertained.

(ii) The affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if the affidavit recites the fact that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry. If desired, it may be combined in one instrument with the affidavit required under Rule 4D(2)(c) after presenting to the court proof that a valid attachment or garnishment has been effected.

(iii) Upon complying with this subsection (c), the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the court clerk.

(d) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending. If no newspaper is published in the county, then the service of summons by publication must be made in a newspaper published in an adjoining county and having a general circulation in the county in which the action is pending.

(e) Mailing summons and complaint. At any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, a copy of the summons for publication and a copy of the complaint must be deposited in a post office in this state, postage prepaid, and directed to the defendant at the defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation and personal service cannot with due diligence be effected within Montana on any of the persons designated in Rule 4D(2)(b)(iv), then service may be completed on the corporation by service upon the secretary of state pursuant to the provisions of Rule 4D(2)(c).

(5) Service on secretary of state.

(a) (i) Whenever service is to be made upon certain corporations as provided in Rule 4D(2)(c), the requirements of that subsection must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed or is considered by law to have been appointed as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney shall:

(A) make an affidavit stating the facts showing that the secretary of state is the agent and stating the residence and last-known post-office address of the person to be served;

(B) file the affidavit with the justice or city court in which the claim for relief is pending; and

(C) provide sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state.

(ii) When there has been deposited with the justice or city court in which the claim for relief is pending the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, then the judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(b) Service on the secretary of state is sufficient personal service upon the person to be served, provided that notice of the service and a copy of the summons and complaint are sent by certified mail by the secretary of state or deputy to the party to be served at the party's last-known address, marked "deliver to addressee only" and "return receipt requested", and provided further that the return receipt is received by the secretary of state and purports to have been signed by the addressee or the secretary of state is advised by the post office that delivery of the certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4D(2)(c). The date the secretary of state receives the return receipt or receives advice by the post office that delivery of the certified mail was refused by the addressee is considered the date of service. As an alternative to sending the summons and complaint by certified mail, the secretary of state or deputy may cause a copy of the summons and complaint to be served by a qualified law enforcement officer, in accordance with the procedure set out in Rule 4D(1), (2), or (3).

(c) (i) The secretary of state or deputy shall make an original and two copies of an affidavit reciting:

(A) the fact of service upon the secretary of state by the justice or city court, including the day and hour of the service;

(B) the fact that a copy of the summons and complaint and notice has been mailed to the defendant, including the day and hour of the mailing, except in those cases where the secretary of state is relieved from doing so under the provisions of Rule 4D(2)(c), in which case the affidavit must so state; and

(C) the fact of the receipt of a return from the post office, including the date and hour of receipt, with a copy of the return to be attached to the affidavit.

(ii) The secretary of state or deputy shall then transmit the original summons and the original affidavit, along with a copy of the notice to the defendant if a notice is required, to the justice or city court in which the claim for relief is pending, where it must be filed in the claim for relief by the judge. The secretary of state shall also transmit to the attorney for the plaintiff a copy of the affidavit of the secretary of state, along with a copy of the notice to the defendant if a notice is required.

(iii) The secretary of state shall keep on file in the office a copy of the summons, a copy of the affidavit served on the secretary of state by the judge, and a copy of the affidavit executed and issued by the secretary of state.

(6) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(c), the court in which the claim for relief is pending may order a continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it considers just, the court may allow any process or proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(8) Proof of service.

(a) Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(i) if served by a constable or other officer, a certificate of service; or

(ii) if served by any other person, an affidavit of service; and

(iii) the written admission of the defendant showing the date and place of service.

(b) The certificate or affidavit of service mentioned in subsection (8)(a) must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable, or person designated by law, the affidavit of service must state:

(a) that the person so serving is of legal age;

(b) the date and place of service; and

(c) that the person making the service knew the person served to be the person named and intended to be served.

(10) Procedure where only some of defendants served. If the summons is not served on all of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served and may at any time thereafter have a summons served against any defendant not served with the first process to cause that defendant to appear in court to show cause why that defendant should not be made a party to the judgment. Upon a defendant being duly served with the process, the court shall hear and determine the matter in the same manner as if the defendant had been originally brought into court, and the defendant must also be allowed the benefit of any payment or satisfaction that may have been made on the judgment before recovered.

____
Plaintiff/Plaintiff Attorney

____
Address

____
Plaintiff/Plaintiff Attorney telephone number
IN THE JUSTICE/CITY COURT OF____________ COUNTY, MONTANA

BEFORE______, JUSTICE OF THE PEACE/CITY JUDGE.

* * * * * *

________________,)
Plaintiff,) Civil Case______
vs.) SUMMONS
________________,)
Defendant.)
________________)

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT, GREETINGS:

You are hereby summoned to answer the Complaint in this action which is filed in the office of the above-entitled Justice of the Peace/City Judge, a copy of which is herewith served upon you. In the event that you deny any or all of the material facts stated in the complaint, you must file your written answer together with a $15.00 answer fee for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff or attorney at the address as shown on the Complaint.

The answer must contain a denial of any or all of the material facts stated in the Complaint that the Defendant believes to be untrue, and also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If you fail to answer or assert a counterclaim within twenty (20) days after service of the Complaint and Summons, the Plaintiff may request entry of default judgment against you for the relief demanded in the Complaint.

GIVEN under my hand this _____ day of ___________, 20_.

____
JUDGE/CLERK OF COURT

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997; amd. Sup. Ct. Ord. Feb. 26, 2002, eff. Feb. 26, 2002.

Rule 5. Service and filing of pleadings and other papers, excluding summons.

A. WHEN MADE.

Whenever a pleading permitted by Rule 7 is filed and served, the party served shall file and serve any further written pleading within 20 days, unless otherwise provided by law, after service unless the time period is extended pursuant to Rule 6B, M.J.R.Civ.P. The party served may file a written pleading after 20 days if no default has been entered. All original pleadings and other papers must be filed with the court. A copy must be served on all other parties or their attorneys as provided below.

B. HOW MADE.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service must be made upon the attorney unless service upon the party personally is ordered by the judge.

(2) Service must be made by delivering a copy to the attorney, or to the party if not represented by an attorney.

(a) Delivery of a copy to an attorney within this rule means:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with a person in charge;

(iii) if there is no one in charge, leaving it in a conspicuous place in the attorney's office; or

(iv) by mail directed to the attorney's last known address.

(b) Delivery of a copy to a party within this rule means:

(i) handing it to the party; or

(ii) by leaving it at the party's place of residence with a person of suitable age and discretion who resides there; or

(iii) by mail directed to the party's last known address.

(c) Service by mail is complete upon mailing.

C. PROOF OF SERVICE.

Proof of service must be made by an affidavit of the party or the party's attorney making service, by the certificate of the attorney making service, or by an acknowledgment in writing from the party or attorney served. The affidavit, certificate, or acknowledgment must be filed with the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 6. Time.

A. COMPUTATION. When the computation of any period of time prescribed or allowed by these rules is by order of a court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. EXTENSION. When by these rules, by a notice given under these rules, or by order of a court an act is required or allowed to be done at or within a specified time, the judge for cause shown may extend the period if a motion is made before the expiration of the period originally prescribed or extended by previous permission of the court or after expiration of the specified period if failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act or take a proceeding within a prescribed period after service of a notice or other paper and the notice or other paper is served by mail, 3 days must be added to the prescribed period.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 7. Pleadings allowed.

In justice or city court there may be a complaint, answer, counterclaim, and reply to a counterclaim. No other pleadings are allowed, except that the court may order a reply to an answer. A "motion" is not a "pleading".

A. COMPLAINT. The complaint is a concise written statement of the facts constituting the plaintiff's cause of action and the type and amount of relief requested.

B. ANSWER. The answer must contain a denial of any or all of the material facts stated in the complaint that the defendant believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If an answer is not filed within 20 days after service of the complaint and summons, the plaintiff may request entry of default as provided in Rule 21 of these rules.

C. COUNTERCLAIM.

(1) A defendant may file with the answer a counterclaim against the plaintiff. The defendant must file as a counterclaim any claim arising out of the same transaction or occurrence as the complaint, which is within the jurisdiction of the justice or city court, or it is deemed to be waived. The counterclaim must be a concise written statement of the facts constituting the defendant's cause of action and the type or amount of relief requested. Any counterclaim that exceeds the jurisdiction of the justice or city court must be dismissed without prejudice.

(2) If the counterclaim, after being dismissed without prejudice as outside the subject matter jurisdiction of the justice or city court, is filed in the district court, then upon order of the district judge the pending justice or city court action must be transferred to the district court.

D. REPLY TO COUNTERCLAIM. The reply must contain a denial of any or all of the material facts stated in the counterclaim that the plaintiff believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense to the counterclaim. Any matter not denied shall be deemed admitted. If a reply to a counterclaim is not filed within 20 days after service of the counterclaim, the defendant may request entry of default as provided in Rule 21 of these rules.

E. CROSS CLAIMS. Cross claims are not allowed in a justice or city court, unless, in accordance with Rule 12 of these rules, justice cannot be otherwise obtained.

F. GENERAL RULES OF PLEADING.

(1) Form — pleadings in justice or city court. All pleadings must be in writing and filed with the court. They must be in a form that enables a person of common understanding to know what is intended.

(2) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. A statement of fact in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided.

(3) New matter. New matter in the answer or reply to counterclaim is considered denied by the opposing party.

(4) Signing of pleadings. Every pleading of a party represented by an attorney must be signed by that attorney and must state the address and telephone number of the attorney. A party who is not represented by an attorney shall sign the pleading and state the party's address and telephone number.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 8. Amendment of pleadings.

A. WHEN ALLOWED. Each party may amend its pleading one time, without leave of court, if the amended pleading is filed within the following times:

(1) The plaintiff's amended complaint, if any, must be filed no later than 10 days after defendant's answer to the original complaint if served upon plaintiff.

(2) The defendant's amended answer, if any, must be filed no later than 10 days after the filing of the original answer. The amended answer may add a counterclaim consistent with Rule 7C. Further amendments may be granted only upon written consent of the opposing party or upon leave of the court for good cause shown.

B. ANSWER TO AMENDED COMPLAINT. A defendant shall file and serve an answer within 20 days of the service of an amended complaint.

C. REPLY TO AMENDED COUNTERCLAIM. A plaintiff must file and serve a reply within 20 days after service of an amended counterclaim.

D. LIMIT. No other pleading to an amended pleading may be allowed, except that the court may order a reply to the amended answer.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 9. Motions and other papers.

A. APPLICATION. An application to the court for an order must be by motion, which, unless made during a hearing or trial, must be in writing. A motion must state with particularity the grounds for the motion and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing on the motion.

B. OPPOSITION. Any party opposing a motion must do so in writing within 10 days of service.

C. GENERAL RULES. The rules applicable to captions, signing, and other matters of form and the method and proof of service of pleadings apply to all motions and other papers provided for by these rules.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 10. Naming of parties to action.

A. PARTIES.

(1) Actions must be prosecuted or defended in the name of the person who benefits from or is responsible for the satisfaction of any judgment rendered in justice or city court. That person is considered the real party in interest.

(2) A personal representative, administrator, guardian, conservator, fiduciary, bailee, trustee of an express trust, party with whom or in whose name a contract has been made for the benefit of another, or party authorized by statute may be named as a party to an action. In such a case, the pleadings must contain information concerning the circumstances or statute that enables the person to appear in the party's name and not in the name of the person for whose benefit the action is prosecuted or defended.

B. AMENDMENT — DISMISSAL. Upon motion of the opposing party or upon the court's own motion, the court must require an amendment of the pleadings to name the real party in interest. If the real party in interest is not named within 5 days, the action will be dismissed without prejudice.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 11. Substitution of parties.

A. SUBSTITUTION. If an original party to an action dies, becomes incompetent, transfers the party's interest, or is succeeded in office and the claim survives the absence of the original party, the justice or city court may order substitution of the proper party. The substitution is governed by Rule 10A.

B. FAILURE TO MAKE SUBSTITUTION. If substitution is not made within twenty (20) days after being ordered, the action must be dismissed without prejudice.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 12. Joinder of claims and parties necessary for just adjudication.

A. INVOLUNTARY JOINDER. A person subject to service of process must be joined if in the person's absence:

(1) complete relief cannot be accorded among those already parties;

(2) the person will not be able to protect the person's interest in the subject of the action without being named; or

(3) there is the likelihood of double, multiple, or otherwise inconsistent obligations incurred by reason of the person's claimed interest.

B. PERMISSIVE JOINDER. All persons may join in an action if they assert any right to relief, whether jointly or as individuals, arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all will arise in the action.

C. MISJOINDER. Misjoinder of parties not grounds for dismissal. The judge may add or dismiss parties by order either on motion of a party or on the judge's own initiative at any stage of the proceedings and on terms that are just. Claims against a party or parties may be added or severed and proceed to joint or separate trials as considered necessary by the judge in order to render a full adjudication of all claims in an orderly manner.

D. CLASS ACTIONS. Class actions may not be permitted in justice or city court proceedings.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 13. Discovery.

A. SCOPE AND LIMITS. There shall be no formal discovery except pursuant to court order as provided by these rules.

(1) Either party may make a motion for an order to obtain discovery through the use of requests for production, depositions and written interrogatories, regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought is inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Any motion for formal discovery must include a statement that informal discovery was requested but was unsuccessful.

(3) (a) The frequency or extent of use of the discovery set forth in this rule must be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.

(b) The court may act upon its own initiative after reasonable notice or pursuant to Rule 9 or 14.

(4) The type and extent of discovery, as well as the appropriate timeframes, must be determined by the court. Either party may request, or the court may order on its own, a hearing on the motion for discovery.

(5) Deposition will be allowed only upon written motion and at the discretion of the judge and if allowed must be taken as provided in Rules 26 and 28 through 30 of the Montana Rules of Civil Procedure.

B. SANCTIONS. If a party, or an officer, director, or managing agent of a party, or party's attorney fails to comply with this rule or a discovery order issued by a justice or city court, the court may award, against the party or attorney in violation, reasonable expenses, including attorney fees caused by failure to comply. Upon a showing of serious abuse of the discovery process the court may dismiss the action or grant default judgment as an appropriate sanction, in addition to or in lieu of a monetary sanction. If the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust, the court is not required to impose sanctions. Nothing in these rules is meant to interfere with the inherent contempt powers of the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 14. Pretrial conferences.

A. OBJECTIVES. In any action, the court may, in its discretion, direct the parties' attorneys or the parties to appear before it for one or more conferences before trial for the following purposes:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be delayed because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial with more thorough preparation; and

(5) facilitating the settlement of the case. All pretrial scheduling shall be the duty of the judge.

B. SUBJECTS TO BE DISCUSSED AT PRE-TRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
(2) the necessity or desirability of amendments to the pleadings;
(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authentication of documents, and advance rulings from the court on the admissibility of evidence;
(4) the avoidance of unnecessary proof and of cumulative evidence;
(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
(6) the possibility of settlement;
(7) the form and substance of the pretrial order;
(8) the disposition of pending motions;
(9) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and form of verdict in a jury action, and such other matters as may aid in the disposition of the action.

Each party or an attorney for each party participating in any conference before trial must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. After any conference held pursuant to this rule, an order must be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

C. SANCTIONS. If a party or a party's attorney fails to obey a pretrial order, if no appearance is made on behalf of a party at the pretrial conference, if a party or a party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon the judge's own motion, may make orders as are just and may deal with the offending party pursuant to Title 3, chapter 10, part 4. In lieu of or in addition to any other sanction, the judge may require the party or the party's attorney, or both, to pay the reasonable expenses, including attorney fees, incurred because of any noncompliance with this rule unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 15. Right to jury trial.

A. RIGHT PRESERVED. The right of a trial by jury as declared by the constitutions of the United States and the State of Montana or as given by statute must be preserved to the parties inviolate.

B. DEMAND. At any time after the commencement of the action and not later than 5 days after the service of the last pleading directed to the issue, a party may demand a trial by jury, as allowed by law, of any issue of fact by filing in the court and serving upon the other parties a written demand for a jury trial. The demand may be stated in a pleading of the party.

C. HOW WAIVED. A jury may be waived:
(1) by consent of the parties entered in the docket;
(2) by the failure of any party to demand a jury trial under this rule;
(3) by the failure of either party to appear at the time fixed for the trial of an issue of fact.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 16. Failure to appear or proceed.

A. DEFENDANT. If a defendant, who has been properly served, fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party or parties.

B. PLAINTIFF. If a plaintiff fails to appear at the time fixed for trial, the judge shall dismiss the plaintiff's claim with prejudice and award costs to the defendant. The trial may proceed on any other pending claims of any other parties.

C. TIME. If a party fails to pursue disposition of a matter filed in a justice or city court in a timely manner, the court may, on it's own motion, dismiss the matter without prejudice. A dismissal at the court's discretion under this Rule 16C must be by written notice of the court to all parties and may not be made for at least 90 days after the last action. The notice must state that unless good cause is shown by a party or a party's attorney within 30 days of the court's notice, the matter must be dismissed without prejudice. If good cause is shown, in writing, by a party or a party's attorney, the court may set the matter for trial and no dismissal may be entered by the court.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 17. Costs.

Jury fees and other costs as defined in 3-15-203, M.C.A., and Title 25, chapter 10, M.C.A., must be taxed as costs against the losing party as determined by the court, following the procedures set forth in Title 25, chapter 10.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 18. Jury.

A. NUMBER OF JURORS. A jury in a justice or city court consists of six persons, but the parties may agree to fewer than six.

B. IMPANELING. The jury in a civil action in justice or city court must be impaneled as provided in 25-7-202 through 25-7-209 and 25-7-221 through 25-7-224. Where the words "clerk" or "district court" occur in those sections, the words refer to the justice or city court in application under this rule.

C. SICKNESS OF JUROR. If a juror becomes sick and is unable to perform the juror's duty after impaneling of the jury but before verdict, the judge may order the juror discharged and proceed with the other jurors, swear in an alternate juror, continue the case, or discharge the jury and impanel a new jury.

D. PREVENTION OF JURY FROM GIVING VERDICT. When a jury is discharged or prevented from giving a verdict by reason of accident or other cause during the course of the trial, the judge may try the action with another jury again at a future time.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 19. Order of trial.

In a nonjury trial or in a jury trial after the jury has been impaneled, the trial must proceed in the following order, unless the court, for good cause, otherwise directs:

(1) The party on whom rests the burden of the issues may briefly state a case and the evidence by which the party expects to sustain it.

(2) The adverse party may next briefly state a defense and the evidence the party expects to offer in support of it, or the party may reserve the opening statement for the beginning of the case.

(3) The party on whom rests the burden of the issues must first produce evidence. The adverse party will then produce evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

(5) The court shall charge the jury with its duties, instructing it in all matters of law that it finds necessary for the jury's information in rendering a verdict. Proposed instructions may be offered to the court by the parties. Instructions shall be offered if ordered at the pretrial conference.

(6) (a) The order for final argument is plaintiff, defendant, and rebuttal by plaintiff of defendant's argument. No further argument is allowed. If several defendants having several defenses appear by different counsel, the court shall determine their relative order in the evidence and argument.

(b) In arguing the case to the jury, a party or counsel may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 20. Notice of trial.

After all parties served with process have appeared or some have appeared and the remaining have been defaulted, the judge, upon request of any party, shall fix a day for trial of the cause and shall provide notice of the trial date to the plaintiffs and defendants who have appeared.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

Rule 21. Entry of judgment.

A. GROUNDS. A judge shall enter judgment in the docket of the court in the following circumstances:

(1) Offer to compromise before trial. If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against the defendant for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. However, if the plaintiff does not accept the offer before the trial and fails to recover in the action a sum in excess of the offer, the plaintiff cannot recover costs. In such a case, costs must be adjudged against the plaintiff and, if the plaintiff recovers, be deducted from the plaintiff's recovery. The offer and failure to accept may not be given in evidence or affect the recovery except as to costs.

(2) Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs against the plaintiff in the following cases:

(a) when the plaintiff voluntarily dismissed the action, at or before the close of the plaintiff's evidence, when there is no counterclaim;

(b) when the plaintiff fails to amend the complaint within the time allowed by the court;

(c) for improper venue under Rule 3B of these rules.

(3) Judgment by confession. Judgment by confession must be as provided for in Title 27, chapter 9.

(4) Judgment on pleadings. After the pleadings are closed but within a time as not to delay the trial, any party may move for judgment on the pleadings. Matters outside the pleadings may not be presented to the court. A court may grant judgment on the pleadings for either party. The court may only grant judgement on the pleadings if the pleadings themselves construed in the light most favorable to the party opposing the judgment, show that it would be impossible for the party against whom the judgment is entered to prevail at trial.

(5) Summary judgment. Either party may move for, and the judge may grant, summary judgment on one or more of the issues raised by the pleadings. In so moving, responding to the motion, and ruling on the motion, the parties and the court shall follow the procedures specified in Rule 56 of M.R.Civ.P.

(6) Upon verdict. After a trial by jury, the judge shall enter judgment at once in conformity with the verdict.

(7) After trial by judge. When the trial is by the judge, the judge shall enter judgment within 30 days.

(8) By default.

(a) (1) When a party against whom a judgment for affirmative relief is sought has failed to answer or reply as provided by these rules upon written motion by the plaintiff or counterclaiming defendant, the judge or clerk must enter the default against such party.

(2) When a default has been entered against a defendant for failure to answer and if the plaintiff's claim against the defendant is for a sum certain or for a sum that can by computation be made certain, upon the plaintiff's written request stating the amount due, the judge or clerk must enter judgment for that amount and costs against the defaulted defendant.

(b) If in order to enable the court to enter judgment or to carry it into effect it is necessary to determine the amount of damages or to establish the truth of any allegation by evidence, the court may conduct hearings it considers necessary and proper.

(c) A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment in the complaint or counterclaim.

B. MULTIPLE DEFENDANTS. The court shall enter judgment only against those over whom it has obtained jurisdiction.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; Rule 21C disapproved, Sec. 3, Ch. 285, L. 1991; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 22. Relief from judgment.

A. RELIEF. A judge may, on such terms as may be just and on the payment of costs, relieve a party from any judgment or other order taken against the party by mistake, inadvertence, surprise, or excusable neglect, but the application for relief must be made within 30 days after entry of the judgment and upon an affidavit showing good cause for it. The party applying for relief shall serve the application and give notice of hearing to all other parties. The court shall set a hearing within 10 days after receipt of the application.

B. CLERICAL MISTAKES. Clerical mistakes or errors arising from oversight or omission in pleadings, judgments, orders, and other parts of the record may be corrected by the court at any time on its own initiative or on the motion of any party and after any notice the court may order.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997.

Rule 23. Execution.

A. HOW ENFORCED.

(1) By justice or city court. A judgment may be enforced within the boundaries of the state by a writ of execution issued by the justice or city court or the clerk thereof.

(2) Issuance of execution by judge or clerk of justice or city court. From the time of docketing in the clerk's office, execution may be issued thereon by the judge or clerk to the sheriff, constable, or levying officer of any county in the state.

B. TIME. The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within 10 years from the entry of judgment, the justice of the peace or city judge who entered the judgment or the successor in office or the clerk shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION. Determination of the amount of the judgment outstanding and the type, kind, description, and location of the personal property of the judgment debtor is the exclusive duty of the judgment creditor. The execution must be directed to the sheriff, a constable, or a levying officer of the county and must be subscribed by the judge or clerk and bear the date of its issuance. The execution must contain the following information and may be in the following form:

IN JUSTICE/CITY COURT, ..., ... COUNTY, MONTANA

BEFORE .... JUSTICE OF THE PEACE

.... CITY JUDGE

............)
............) Case No. ......
Plaintiff)
vs.) EXECUTION
............)
............)
Defendant

THE STATE OF MONTANA TO THE SHERIFF, A CONSTABLE, OR A LEVYING OFFICER OF .... COUNTY:

WHEREAS, on the ...... day of ...., 20...., ... recovered a judgment in the said Justice/City Court against .... as follows:

Original or Balance Due on Judgment in the amount of	$......
Together with accrued interest at ...% per annum on the Judgment	$......
Costs & Disbursements Accrued	$......
Credits	$......
Total sum due & owing at date of this execution	$......

Together with all costs of execution (and) (or) for personal property described as follows:

....

....

(Attach description if necessary)

NOW, you, the sheriff, constable, or levying officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of receipt.

Given under my hand this ...... day of ...., 20.....

....

Justice of the Peace or Clerk

....

City Judge or Clerk.

D. RETURN OF EXECUTION. The writ of execution shall remain in effect for 120 days from the date of receipt by the sheriff or levying officer and may be served multiple times during that period at the direction of the judgment creditor. The execution must be returned to the court:

(1) not less than 10 days nor more than one-hundred twenty (120) days after receipt of the recovery by the sheriff or levying officer;

(2) if the judgment creditor has requested the return of the writ.

(3) at the written direction of the officer, agent, or attorney who sent the writ, the sheriff or levying officer may return the writ to the requesting party.

E. RENEWAL. If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ may be issued until any outstanding issued writ, together with the return thereon, is returned to the issuing justice or city court.

F. SUPPLEMENTAL PROCEEDINGS. Proceedings supplementary to execution set out in 25-13-502, 25-14-101 through 25-14-105, 25-14-107, and 25-14-108 are applicable to justice or city courts, the word "constable" being substituted for the word "sheriff" and the words "justice or city judge" being substituted for the word "judge".

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990; Rule 23(2) disapproved, Sec. 3, Ch. 285, L. 1991; amd. Sup. Ct. Ord. July 24, 1991, eff. Oct. 1, 1991; amd. Sup. Ct. Ord. June 24, 1997, eff. Oct. 1, 1997; amd. Sup. Ct. Ord. June 25, 1998, eff. June 25, 1998; amd. Sup. Ct. Ord. Oct. 16, 2001, eff. Oct. 16, 2001; amd. Sup. Ct. Ord. Feb. 26, 2002, eff. Feb. 26, 2002.

Rule 24. Appeal to district court.

Appeals from a justice or city court to a district court are governed by Title 25, chapter 33, except that the undertaking on appeal, when the judgment is for the payment of money, may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs.

History: En. Sup. Ct. Ord. February 9, 1990, eff. June 1, 1990.

CHAPTER 24

MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

Part 1 — Rules

Rule
1. Scope of rules.
2. Multi-judge courts — allocation of cases.
3. Files and exhibits.
4. Docket and index.
5. Form and quality of paper filed.
6. Motions.
7. Ex parte matters.
8. Presenting orders etc.
9. Witnesses subpoenas.
10. Duty to make service.
11. Filing of discovery.
12. Request for jury trial.
13. Decorum.
14. Representation.
15. Office hours.
16. Pre-trial conference.
17. Payment of bonds.
18. Continuances.
19. Jury instructions.
20. Voir dire.
21. Time computation.

Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Part 1
Rules

Rule 1. Scope of rules.

(a) These rules, together with the Montana Justice and City Court Rules of Civil Procedure, govern the practice in all justice and city courts of the State of Montana.

(b) No local rules shall be adopted in conflict with these rules.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 2. Multi-judge courts — allocation of cases.

(a) If there is more than one justice of the peace in the same county, or more than one city judge in the same city, the judges shall by agreement divide the court caseload, civil and criminal, among the judges.

(b) In the event that an agreement cannot be reached, upon application of one of the judges listed above, the district judge of the judicial district or the chief district judge in a multi-judge district, shall enter an order which equitably apportions the caseload among the judges considering whether the judges are full or part time.

(c) All law enforcement agencies within the court's jurisdictional area shall be informed of the order dividing the jurisdictional area. Complaints shall be filed with the court in compliance with the division order of the judges. A complaint improperly filed shall be reassigned to the proper judge and not dismissed.

History: En. Sup. Ct. Ord. Aug. 31, 1994.

Rule 3. Files and exhibits.

(a) The court is the custodian of all court files. Files shall not be taken from the court without the consent of the judge.

(b) Every exhibit placed on file or offered in evidence shall be held in the custody of the court. Unless there be good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

(c) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, a party may apply to the court for an order to dispose of exhibits, and shall notify the other party of said application. Twenty days after mailing of said notice the court may enter its order authorizing disposition of exhibits.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 2, 1993; redes. Rule 3 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 4. Docket and index.

(a) The court shall assign each citation and complaint a docket or case number. All docket or case numbers shall be in numerical order.

(b) The court shall maintain an alphabetical index to the docket as provided under Section 3-10-503, MCA.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 3, 1993; redes. Rule 4 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 5. Form and quality of paper filed.

(a) All papers, except the Uniform Complaint and Notice to Appear, shall be written in ink or typed on a good grade of white paper 8½" by 11" in size.

(b) At the upper left margin of the first page of all papers filed with the court, shall be the name, address and telephone number of the responsible attorney or party. Below the responsible party information shall appear the title of the court, the case title and the docket number.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 4, 1993; redes. Rule 5 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 6. Motions.

(a) All motions or application for orders in civil or criminal cases must be made in writing as required by Rule 9 of the Montana Justice and City Court Rules of Civil Procedure. This rule does not apply to motions made during the progress of a trial.

(b) At the time of filing the motion, there shall be filed supporting affidavits or documents, if referred to in the motion or notice of motion.

(c) Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file will not subject a motion to summary ruling.

(d) The court may order oral argument on the motion.

(e) Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of the applicable time limits.

(f) The requirement of a brief is fulfilled by a written statement or summary setting forth the facts and basis of the motion. The brief may be made a part of or attached to the motion.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 5, 1993; redes. Rule 6 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 7. Ex parte matters.

All requests for extension of time or continuances and other permissible ex parte matters shall be in writing. The request must provide that the opposing party has been contacted and given reasonable notice of:

(a) the time and place of the ex parte conference or meeting,

(b) the substance of the order sought, and

(c) whether the party opposes the matter.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 6, 1993; redes. Rule 7 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 8. Presenting orders etc.

(a) It shall be the duty of a party obtaining any order, judgment, warrant, summons, subpoena or like order to present the same in written form for the signature of the judge at the time of applying for the same.

(b) Two copies of any order, warrant, summons, subpoena, or like order requiring service shall be presented to the judge for signature, both shall be signed by the judge as original orders. One shall be retained as part of the court file, and the other used for service and returned to the court after service.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 7, 1993; redes. Rule 8 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 9. Witnesses subpoenas.

(a) When a case is set for trial the parties shall file with the court a written request for subpoenas for all known witnesses, and for any additional witnesses as soon as they are ascertained.

(b) The requesting party shall cause the subpoenas to be served as provided by law.

(c) No motion for continuance will be entertained unless a substantial compliance with this rule is shown.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 8, 1993; redes. Rule 9 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 10. Duty to make service.

(a) It shall be the duty of the parties when personal service is required of an order, warrant, summons, subpoenas, or any such order, to cause it to be delivered to the chief of police, sheriff or other qualified person for service.

(b) It shall be the duty of the parties in all cases to simultaneously serve their adversaries with a copy of all motions, pleas and briefs on the same day as filing with the court.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 9, 1993; redes. Rule 10 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 11. Filing of discovery.

Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant portions of unfiled documents.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 10, 1993; redes. Rule 11 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 12. Request for jury trial.

A request for a jury trial made within seven (7) days of the time set for trial may be treated by the court as a motion for continuance and the trial date vacated and reset.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 11, 1993; redes. Rule 12 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 13. Decorum.

(a) When the court convenes all persons in attendance in the courtroom shall rise until the judge has taken the bench.

(b) The judge of the court shall, when presiding in open court, wear judicial robes.

(c) All persons shall, when in the courtroom, wear appropriate clothing.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 12, 1993; redes. Rule 13 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 14. Representation.

(a) A party may represent oneself, or be represented by counsel.

(b) Except as provided in (c) below, no representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana. A nonresident attorney may be permitted to represent a party upon motion of a licensed resident attorney as allowed under Section IV, Pro Hac Vice, of the 1998 Rules for Admission to the Bar of Montana.

(c) Unless the articles of organization state otherwise, a member with a majority interest in a limited liability company may represent the limited liability company as an attorney in justice's court as provided in 25-31-601.

(d) Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; Rule 13, 1993; redes. Rule 14 by Sup. Ct. Ord. Aug. 31, 1994; amd. Sup. Ct. Ord. Feb. 15, 2000, eff. Feb. 15, 2000; amd. Sup. Ct. Ord. No. AF 19-0073, June 25, 2019, eff. June 25, 2019.

Rule 15. Office hours.

(a) On judicial days, regular office hours shall be designated by the court for the transaction of business. Notice of the hours shall be posted in the court's office.

(b) The court shall establish a regular time for initial appearances and arraignments on traffic and criminal actions. Notice of the time set shall be posted in the court's office.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 14, 1993; redes. Rule 15 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 16. Pre-trial conference.

(a) Pre-trials conferences shall be governed by Rule 14 of the Montana Justice and City Court Rules of Civil Procedure.

(b) Unless otherwise ordered by the court no pre-trial conference will be set. A party may request a pre trial conference not less than seven (7) days before trial.

(c) An attorney representing a party at a pre-trial conference shall appear with sufficient authority from the party so as to expedite the settlement of the action.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 15, 1993; redes. Rule 16 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 17. Payment of bonds.

(a) Bonds established by the judge in a schedule of bail for offenses may be paid to the court during business hours on every day except nonjudicial days. The schedule of bail shall be posted in the court's office.

(b) Bonds shall only be returned in the name of the person who deposited the same.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 16, 1993; redes. Rule 17 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 18. Continuances.

(a) A continuance or resetting of a trial or hearing may be granted upon a showing of good cause. The motion for continuance must be made in writing and served upon the opposing party or counsel.

(b) No continuance will be granted if not timely made. A continuance will not be granted if a party appears at the time set for a hearing or trial unprepared.

(c) A continuance will not be granted except for good cause, without timely notice given to all parties.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. Aug. 31, 1994; Rule 17, 1993; redes. Rule 18 by Sup. Ct. Ord. Aug. 31, 1994.

Rule 19. Jury instructions.

(a) In criminal actions, the general criminal jury instruction set forth in the Montana Judges Deskbook: Municipal, Justice and City Courts shall be given.

(b) In civil actions the general civil jury instruction set forth in the Montana Judges Deskbook: Municipal, Justice and City Courts shall be given.

(c) Any party may request special jury instructions. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties not less than twenty-four (24) hours before trial.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993; amd. Sup. Ct. Ord. May 13, 1997, eff. May 13, 1997.

Rule 20. Voir dire.

Unless for good cause shown, voir dire examination shall be limited to thirty (30) minutes for each party. Requests for additional time are to be made prior to voir dire examination.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

Rule 21. Time computation.

(a) Time shall be computed as provided under Rule 6 of the Montana Justice and City Courts Rules of Civil Procedure.

(b) When the period of time prescribed or allowed is ten days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

History: En. Sup. Ct. Ord. Mar. 25, 1993, eff. June 1, 1993.

CHAPTERS 25 THROUGH 29
RESERVED

CHAPTER 30
PROCEDURE IN MUNICIPAL COURTS

Part 1— General Provisions

25-30-101. Applicability of district court and justice's court rules.
25-30-102. Fees and fines — collection.
25-30-103. Summons — time for answer.
25-30-104. Reply to counterclaim or new matter.
25-30-105. Jury trial.
25-30-106. Judgments.
25-30-107. Costs.
25-30-108. Appeals.
25-30-109. Pretrial conferences or hearings — appearance by telephone conference.

Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Part 1
General Provisions

25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-115, 25-31-402, 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-1002), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court must be the same as in district court.

History: (1)En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; Sec. 11-1711, R.C.M. 1947; (2)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; R.C.M. 1947, 11-1711(1), 11-1719(part); amd. Sec. 2, Ch. 409, L. 1979; amd. Sec. 111, Ch. 575, L. 1981; amd. Sec. 24, Ch. 16, L. 1991.

25-30-102. Fees and fines — collection. (1) (a) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(b) Fees assessed in municipal court may not exceed the fees authorized to be paid to a justice's court in 25-31-112.

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court. The fee incurred by the municipal court must be added to the judgment.

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718; amd. Sec. 1, Ch. 63, L. 1999; amd. Sec. 10, Ch. 515, L. 2001; amd. Sec. 5, Ch. 510, L. 2003.

25-30-103. Summons — time for answer. The summons in municipal court shall be signed by the clerk and shall conform to the provisions of Rules 4 and 12(a), M.R.Civ.P., except that the time for answering is 10 days.

History: En. Sec. 10, Ch. 177, L. 1935; re-en. Sec. 5094.10, R.C.M. 1935; amd. Sec. 8, Ch. 344, L. 1977; amd. Sec. 7, Ch. 429, L. 1977; R.C.M. 1947, 11-1710.

25-30-104. Reply to counterclaim or new matter. Whenever the answer contains a counterclaim or any new matter, the plaintiff shall within 5 days after the service and filing of the answer reply to the counterclaim or new matter in the manner and form provided for in Rules 7(a), 8(d)(2) and (d)(3), and 10(b), M.R.Civ.P.

History: En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; R.C.M. 1947, 11-1711(2).

25-30-105. Jury trial. In civil causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

25-30-106. Judgments. In civil causes, judgments in municipal court shall be made and entered as in district court and shall be of like tenor and effect.

History: En. Sec. 12, Ch. 177, L. 1935; re-en. Sec. 5094.12, R.C.M. 1935; R.C.M. 1947, 11-1712.

25-30-107. Costs. The same costs shall be allowed as are allowed in justices' courts and shall be taxed and retaxed as in district court, 24 hours being allowed for filing memorandum of costs.

History: En. Sec. 14, Ch. 177, L. 1935; re-en. Sec. 5094.14, R.C.M. 1935; R.C.M. 1947, 11-1714.

25-30-108. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has

jurisdiction to hear the appeal, except upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(part).

25-30-109. Pretrial conferences or hearings — appearance by telephone conference. (1) At the discretion of the court, a party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; and

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs.

History: En. Sec. 1, Ch. 515, L. 2001.

MONTANA UNIFORM MUNICIPAL COURT RULES OF APPEAL TO DISTRICT COURT

Applicability of Rules

Rule
1. Scope of rules — limitation of appeal.
2. District court review on appeal.
3. Interests of justice.

Appeals From Municipal Court Judgments

4. How appeals are taken.
5. Time for filing notice of appeal.
6. Undertaking on appeal.
7. Stay of judgment pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.

Appeals in Forma Pauperis

11. Application and manner of proceeding.

General Provisions

12. Filing and service.
13. Form of briefs.
14. Filing and service of briefs.
15. Time for decision and oral argument.
16. Dismissal of appeal in civil actions — costs and damages.
17. Effect of dismissal.
18. Notice and copy of decision — remittitur.
19. Motions.
20. Computation and extension of time.
21. Voluntary dismissal.
22. Title.

Appendix of Forms

I. Applicability of Rules

Rule 1. Scope of rules—limitation of appeal.

(a) Rules govern procedure. These rules govern procedure for appeals in civil and criminal cases from a municipal court judgment or order to a district court. The party appealing is known as the appellant and the adverse party as the respondent.

(b) Limitation of appeals. Appeal from a municipal court judgment shall be limited by city ordinance in the following cases:

(1) In civil causes, the ordinance shall require that a minimum amount in controversy shall exceed $1,000.00, before the district court has jurisdiction to hear the appeal.

(2) In criminal causes, the ordinance shall require that a minimum amount in controversy, fine or restitution shall exceed $300.00 before the district court has jurisdiction to hear the appeal, except if the judgment includes incarceration, no minimum fine may be required for appeal.

(3) Appeals may be taken in criminal cases as provided in §§ 46-20-103 and -104, MCA.

(c) Local rules. No local rules shall be adopted in conflict with these rules.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 2. District court review on appeal.

(a) Review limited to record. Appeal from a municipal court judgment is confined to the record and questions of law.

(b) Record on appeal. The record on appeal to the district court consists of an electronic recording or stenographic transcription of a cause tried, together with all papers filed in the cause.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 3. Interests of justice.

Upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

II. Appeals From Municipal Court Judgments

Rule 4. How appeals are taken.

(a) Filing notice of appeal. An appeal shall be taken by filing a timely notice of appeal in the municipal court.

(b) Joint or consolidated appeals. Two or more persons with interests making joinder practicable, may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the district court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment, order or part thereof appealed from. Form 1 in the Appendix of forms is a suggested form of notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of notice of appeal. The clerk of the municipal court shall serve a copy of the filing of notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the last known address of that party, and shall mail a copy of the notice to the clerk of the district court. The clerk of the municipal court shall note on each copy served, the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or a party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

(e) Appeal of protective order. Appeal of a protective order is governed by §§ 40-4-124 and 40-15-302, MCA.

(f) Appeal from judgment by default. There is no appeal from a judgment by default rendered in a municipal court except on questions of law which appear on the face of the papers or proceedings and except in cases when the municipal court has abused its discretion in setting aside or refusing to set aside a default or judgment.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 5. Time for filing notice of appeal.

(a) Appeals in civil cases.

(1) Notice of appeal. In civil cases notice of appeal required by Rule 4 shall be filed with the clerk of the municipal court within 30 days after the rendition of the judgment.

(2) Undertaking. An appeal is not effective until an undertaking is filed as provided by these rules.

(3) Appeal of an order of protection. An order of protection made pursuant to §§ 40-4-121 or 40-15-201, MCA, is immediately reviewable by the district court upon filing the notice of appeal. No undertaking is required for an appeal from an order of protection.

(b) Appeal in criminal cases.

(1) Scope of appeal by state. The scope of appeal by the state is governed by § 46-20-103, MCA.

(2) Scope of appeal by defendant. The scope of appeal by the defendant is governed by § 46-20-104, MCA.

(3) Notice of appeal. In criminal cases an appeal from a judgment must be taken within 10 days. An appeal from an order or judgment under § 46-20-103, MCA, must be taken within 10 days.

(4) No undertaking required in criminal cases. No undertaking for costs is required for appeals in criminal cases.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 6. Undertaking on appeal.

(a) Undertaking on appeal in civil cases.

(1) Except as provided in subsection (4), an appeal from a municipal court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against appellant in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a municipal court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against appellant in said action in the district court and obey any order made by the court therein.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(A) during the possession of such property by appellant, appellant will not commit or suffer to be committed any waste thereon; and

(B) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against appellant in the action in the district court, appellant will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof or appellant will pay any judgment and costs that may be recovered against appellant in said action in the district court, not exceeding a sum to be fixed by the municipal court judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this rule.

(5) The provisions of Rule 8 apply to a surety upon a bond given pursuant to this rule.

(b) Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of $100 and conditioned upon the party paying all costs that may be awarded against appellant and obeying any order of court made in the action.

(c) Criminal cases. No undertaking for costs is required in appeals in criminal cases.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 7. Stay of judgment pending appeal.

(a) Stay in civil cases.

(1) Stay of judgment or order. Except when an undertaking is required under Rule 6(a), upon filing a notice of appeal from a judgment or order the appellant may apply to the municipal court on notice or ex parte for a stay of the execution of the judgment or order. The municipal court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing the party's property. The municipal court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of Rule 8 apply to a surety upon a bond given pursuant to this rule.

(2) Stay when undertaking filed. On the filing of the undertaking required under Rule 6, the municipal court must stay the execution of the judgment or order.

(3) Stay of execution when undertaking filed. If an execution be issued, on the filing of the undertaking, the municipal court judge must direct the execution officer to stay all proceedings on the same. Such execution officer must, upon the payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees on the execution are not paid, the execution officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

(4) Sale of perishable property. If the judgment or order appealed from directs the sale of perishable property, the municipal court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the district court.

(b) Stay in criminal cases.

(1) Stay of imprisonment. If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the municipal court.

(2) Stay of fine and costs. If an appeal is taken, a sentence to pay a fine, or a fine and costs, shall be stayed by the municipal court.

(3) Application to the district court. On application, the district court in the interest of justice may suspend, modify, restore, or grant any order made under this rule.

(4) Effect of appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed by the district court.

(c) Stay of protective orders. An appeal from a protective order does not stay or affect the protective order. On application, the district court may stay a protective order. The district court may require certain conditions be met to protect the alleged victim before issuing a stay of the protective order.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 8. Sureties and their justification.

(a) Justification of sureties. The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the undertaking, and unless they or other sureties justify before the municipal court judge or a judge of the district court of the county in which such action has been tried within 5 days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given. The sureties on the undertakings mentioned in this rule must justify as provided in § 33-26-102, MCA.

(b) Deposit of money in lieu of undertaking. Whenever an undertaking is required on appeal by the provisions of these rules, a deposit in the municipal court below of the amount of the judgment appealed from plus $300 or, if the judgment is for the recovery of specific personal property, the value of the property plus $300 or, if the party in whose favor the judgment is rendered appeals, $100 is equivalent to filing the undertaking. The municipal court clerk shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.

(c) Waiver of undertaking. In all cases where an undertaking is required on appeal by the provisions of these rules, the undertaking or deposit may be waived by the written consent of the respondent.

(d) Defective undertaking. No appeal shall be dismissed for insufficiency of the undertaking thereon or for any defect or irregularity therein if a good and sufficient undertaking be filed in the district court at or before the hearing of the motion to dismiss the appeal, which undertaking must be approved by the district judge.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 9. The record on appeal.

(a) Composition of the record on appeal. The record on appeal to district court consists of the notice of appeal, an electronic recording or stenographic transcription of the case tried, together with the judgment entered and all papers and exhibits filed in the municipal court.

(b) Transcript of the proceedings. The electronic recording of the trial or proceeding will not be transcribed before transmission to the district court, except as provided by Rule 10(f) of these rules. If the proceedings were stenographically recorded the notes will be transcribed in full or in designated parts as stipulated by the parties. The appellant shall order from the reporter a transcript of the proceedings for transmission to the district court. The reporter shall certify the correctness of the transcript. Copies of the transcript shall be sent to all the parties. The appellant shall be liable for the costs of the transcript.

(c) Copies of electronic recording of proceedings. A party may request a copy of the electronic recording of the proceedings. Except as provided under subsection (d), the requesting party shall be liable for the costs of producing a copy of the electronic recording.

(d) Defendants in criminal cases without financial means—petition in municipal court.

(1) Upon imposition of any sentence in a criminal case, a defendant may file in the municipal court a petition requesting that the defendant be furnished with a copy of the electronic recording, or if an electronic recording was not made a transcription of the stenographic record, of the proceedings. The petition shall be verified by the petitioner and shall state facts showing that the petitioner is at the time of filing the petition without financial means to pay for the costs of reproducing the recording or pay for the transcript. If the municipal judge who imposed sentence finds that the defendant is without financial means with which to obtain a copy of the electronic recording, or pay for the transcript, the judge shall order the municipal clerk of court to deliver a copy of the electronic recording, or the transcript, to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the municipal court, a petition to proceed may be filed in the district court within the time required for transmission of the record. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the municipal court. The district court upon a finding that the defendant is without financial means, shall order the municipal clerk of court to deliver a copy of the electronic recording, or the transcript, to the defendant without charge.

(e) Statement of the evidence or proceedings when no record was made or when record is unavailable. If no electronic recording, or stenographic record, of the evidence or proceedings at a hearing or trial was made, or if the recording, or record, is unavailable, the appellant may, within 3 days from the hearing or trial or such time extended as the municipal court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including the appellants recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 3 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the municipal court judge, and as settled and approved shall be included by the clerk of the municipal court in the record on appeal.

(f) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the municipal court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary to fully present the issues raised by the appeal, shall be approved by the municipal court and shall then be certified to the district court as the record on appeal and transmitted thereto by the clerk of the municipal court within the time provided by Rule 10.

(g) Correction or modification of record. If any difference arises as to whether the record truly discloses what occurred in the municipal court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the municipal court, either before or after the record is transmitted to the district court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the district court.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 10. Transmission of the record.

(a) Time for transmission—civil cases. The record on appeal shall be transmitted to the clerk of the district court within 10 days after the filing of the notice of appeal or within an extension by order entered under subdivision (g) of this rule. The appellant shall comply with Rule 9(b) and take any other action necessary to enable the clerk of the municipal court to assemble and transmit the record.

(b) Time for transmission—criminal cases. The record on appeal shall be transmitted to the clerk of the district court within 30 days after the filing of the notice of appeal or within an extension by order entered under subdivision (g) of this rule. The appellant shall comply with Rule 9(b) and take any other action necessary to enable the clerk of the municipal court to assemble and transmit the record.

(c) Duty of municipal court to transmit the record. When the record is complete for purposes of appeal, the clerk of the municipal court shall transmit it to the clerk of the district court. The clerk of the municipal court shall forward the electronic recording of the case to the district court, together with all papers and exhibits filed, certified to be accurate and complete. When the record is received and filed with the clerk of the district court, the clerk of the district court shall notify the parties in writing.

(d) Electronic recording. The electronic recording will not be transcribed for transmission to the district court, except as provided by subdivision (f).

(e) Stenographic record. A stenographic record is not required. A stenographic record will not be transcribed if the proceedings have been electronically recorded. If no electronic recording of the proceedings was made and it was stenographically recorded, the clerk of the municipal court shall transmit the transcript of the case to the district court. The appellant shall order from the reporter a transcript of the proceedings for transmission to the district court. The reporter shall certify the correctness of the transcript. Copies of the transcript shall be sent to all the parties. The appellant shall be liable for the costs of the transcript.

If the transcript is not filed with the clerk of the municipal court within the time for transmission to the district court, or within an extension previously granted, the clerk of the municipal court shall forward to the district court the record of the case without the transcript.

(f) Duty of appellant. It is the duty of the appellant to perfect the appeal. The appellant may have parts or all of the electronic recording transcribed for transmission to the district court. The appellant shall be liable for the costs of the transcript. It is the duty of the appellant to present the district court with a record sufficient to enable it to rule upon the issues of law raised. Failure to present the district court with a sufficient record on appeal may result in dismissal of the appeal.

(g) Extension of time. The municipal court may extend the time for transmitting the record. The municipal court shall not extend the time to a day more than 30 days past the time for transmission of the record under this rule.

(h) Transmission effected. Transmission of the record is effected when the clerk of the municipal court mails or otherwise forwards the record to the district court. The clerk of the municipal court shall indicate, by endorsement on the record or otherwise, the date the record is transmitted to the district court.

(i) District court fees—civil cases. In a civil case appealed to the district court, the appellant within 5 days of the transmission of the record shall pay to the clerk of the district court the district court fee required under § 25-1-201, MCA. Upon the failure of the appellant to pay the district court fee the district court may order dismissal of the appeal, except for appeals in forma pauperis under Rule 11.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

III. Appeals in Forma Pauperis

Rule 11. Application and manner of proceeding.

(a) Application to municipal court. A party in a civil case who desires to proceed on appeal in forma pauperis shall file in the municipal court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the district court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the municipal court shall state the reasons for the denial.

(b) Application to the district court. If the motion for leave to proceed on appeal in forma pauperis is denied by the municipal court, a motion for leave so to proceed may be filed in the district court within 10 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the municipal court and of the statement of reasons for denial given by the municipal court.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

IV. General Provisions

Rule 12. Filing and service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

(b) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for such party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

(e) Number of copies to be filed. A signed original shall be filed with the clerk of the district court unless otherwise ordered by the court.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 13. Form of briefs.

(a) Brief of appellant. The requirement of appellants brief is fulfilled by a simple written memorandum or statement setting forth the judgment or order appealed from, the facts relevant to the issues presented for review, the points of error for the appeal, special points and legal authorities desired to be brought to the attention of the district court, and a short conclusion of the relief sought.

(b) Answer brief of respondent. The answer brief of the respondent shall conform to the requirements of subsection (a), except that a statement of the facts or issues need not be made unless the respondent is dissatisfied with appellants statements.

(c) Reply brief. The appellant may file a brief in reply to respondents answer. The reply brief must be confined to new matter raised in the brief of respondent. No further briefs may be filed except with leave of the district court.

(d) Length of briefs. Except by permission of the district court briefs shall not exceed 10 pages.

(e) Form and quality. All briefs shall be written in ink or typed on a good grade of white paper 8½ inches by 11 inches in size. On the first page of the brief shall appear the title of the district court; the title of the municipal court appealed from, adding to the words Plaintiff and Defendant, the words Appellant and Respondent as the case may require; the title of the brief as Appellants Brief or Respondents Brief as the case may be; and the names, addresses and telephone numbers of the attorneys, or the parties if pro se. Form 4 is a suggested form of the first page of a brief.

(f) Brief references and abbreviations. References in the brief to the record must be specific as to the particulars and their location in the record. Reference to a stenographic record must be made to the specific page of the transcription. Reference to an electronic record must be made to its location on the electronic recording by an accurate recorder counter number. In the discretion of the district court, it may require parts or all of an electronic recording transcribed, and attached as part of the brief. References to exhibits shall be made to the specific page or location in the record where the exhibit was identified, offered, received or rejected. Understandable abbreviations may be used in the brief.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 14. Filing and service of briefs.

(a) Time for filing briefs. The appellant shall serve and file a brief within 15 days after the date on which the record is filed. The respondent shall serve and file an answer brief within 15 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 10 days after the brief of the respondent. The district court may extend the time for filing a brief. The request for extension must be made within the time originally prescribed or within an extension previously granted.

(b) Number of copies to be filed and served. A signed original brief and one copy shall be filed with the clerk of the district court. A copy of each brief shall be served upon all other parties to the appeal.

(c) Consequences of failure to file brief. Except for subsection (d), if an appellant fails to file a brief within the time provided by this rule, or within the time extended, the appeal shall be deemed without merit and subject the appeal to summary dismissal by the district court. Failure to file an answer brief by the respondent shall be deemed an admission that the appeal is well taken and subject to summary ruling by the district court. Reply briefs are optional and failure to file will not subject the appeal to summary ruling.

(d) Protective orders. No briefs shall be required upon filing a notice of appeal or notice of removal pursuant to §§ 40-4-124 or 40-15-302, MCA, except upon order of the district court.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 15. Time for decision and oral argument.

(a) District courts time for decision. The district court shall consider and decide appeals brought under these rules within a reasonable period of time after the filing of the reply brief permitted.

(b) Decision. The district court shall render a decision upon the record and briefs on appeal. The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the municipal court from which the appeal was taken. The decision of the district court may be by order or by memorandum opinion. Form 3 in the Appendix of Forms is an example of disposition by order.

(c) Oral argument. Oral argument shall not be held except on order of the district court.

(d) Protective orders. A municipal court order issued pursuant to §§ 40-4-121 or 40-15-201, MCA, is immediately reviewable at chambers by the district court upon filing a notice of appeal. The district court may affirm, dissolve, or modify an order of the municipal court.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Rule 16. Dismissal of appeal in civil actions—costs and damages.

(a) Dismissal of appeal upon delay—costs and damages. For failure to prosecute an appeal or unnecessary delay in a civil action, the district court may order the appeal dismissed, with costs, and if it appears to the district court that the appeal was made solely for delay, the district court may add to the costs such damages as may be just, not exceeding 25% of the judgment appealed from.

(b) Attorney fees and costs when appeal unsuccessful.

(1) In a civil action if the party appealing fails to reduce the judgment against him or to enlarge the judgment in his favor appealed from $10 or more or reverse the same in the district court, he shall not recover any costs of appeal.

(2) In a civil action if the parties are represented by counsel on appeal, the district court may grant the prevailing party reasonable attorney fees, in addition to costs.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 17. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 18. Notice and copy of decision—remittitur.

(a) Notice and copy of decision to be furnished. Upon the decision of a cause, notice thereof, together with a copy of the courts written order or opinion, will immediately be mailed to each party or their counsel.

(b) Remittitur—when issued—when copy of opinion to accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of the time for filing appeal to the Montana Supreme Court. A copy of the order or opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 19. Motions.

All motions to the court for an order shall be in writing and served upon all parties to the appeal or their counsel.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 20. Computation and extension of time.

(a) Computation of time. When the computation of any period of time prescribed or allowed by these rules is by order of court or by an applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

(b) Extension. The district court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; except the time for filing a notice of appeal shall not extend more than 10 days past the time prescribed for filing a notice of appeal under Rule 5. The motion must be made before the expiration of the period originally prescribed or extended by previous order of the court.

(c) Additional time after service by mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a notice or other paper and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 21. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant. The clerk of the municipal court shall mail a copy of the order of dismissal to the clerk of the district court.

History: **En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.**

Rule 22. Title.

These rules shall be known as the Uniform Municipal Court Rules of Appeal to District Court and may be cited as U.M.C.R.App.

History: En. Sup. Ct. Ord. Mar. 19, 1998, eff. April 1, 1998.

Appendix of Forms

Form 1.

.... NOTICE OF APPEAL TO A DISTRICT COURT FROM A JUDGMENT OR ORDER OF A MUNICIPAL COURT.

IN THE MUNICIPAL COURT OF THE CITY OF........, IN THE COUNTY OF.............., STATE OF MONTANA

A.B., Plaintiff,
vs. Notice of Appeal
C.D., Defendant.

Notice is hereby given that C.D., defendant/plaintiff above-named, hereby appeals to the .... district court in the county of ...., state of Montana (from the final judgment) (from the order) (describing it) entered in this action on the ...... day of ......, 20...

Dated: ...., 20...

(S)
....
Appellant or
Attorney for Appellant

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS.

IN THE MUNICIPAL COURT OF THE CITY OF ...., IN THE COUNTY OF ...., STATE OF MONTANA

A.B., Plaintiff, AFFIDAVIT IN SUPPORT OF APPLICATION
vs. TO PROCEED ON APPEAL WITHOUT
C.D., Defendant. PREPAYMENT OF COSTS

I, ..., being first duly sworn, depose and say that I am the .... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

6. List all your debts and moneys owed.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

....
Signature of Applicant

Subscribed and sworn to before me this .... day of ...., 20..,

....
Notary Public

ORDER

Let the applicant proceed without prepayment of costs.
DATED: ....

....
Municipal Court Judge

OR

The applicant's application to proceed without prepayment of costs is denied for the reason [state reason for denial]

DATED: ....

....
Municipal Court Judge

Form 3.

DISPOSITION OF APPEAL BY ORDER.

IN THE DISTRICT COURT OF THE ...... JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ...., STATE OF MONTANA.

A.B., Plaintiff and Respondent,
vs. ORDER
C.D., Defendant and Appellant.

The court having considered the appeal in this case, the (final judgment) (order) (describing it) entered by the municipal court in this action on the ...... day of ......, 20.. is [affirmed.] [the appeal is dismissed for (describe the reason)] [reversed and remanded to the municipal court for (describe action to be taken)] [amended as follows (describe amendment)].

[DATED AND SIGNED]

Form 4.

PAGE ONE OF BRIEF.

IN THE DISTRICT COURT OF THE ...... JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ...., STATE OF MONTANA.

A.B., Plaintiff and
Respondent,
vs. Cause No..........
C.D., Defendant and District Judge: ....
Appellant.

BRIEF OF APPELLANT

ON APPEAL FROM THE MUNICIPAL COURT OF THE CITY OF ...., IN THE COUNTY OF ...., STATE OF MONTANA, Municipal Judge .... Presiding, Cause No. ....

Name of Attorney/Party
Address
City, State Zip
Telephone No.
Attorney for Defendant
and Appellant
[or Defendant and Appellant, Pro Se]

Name of Attorney/Party
Address
City, State Zip
Telephone No.
Attorney for Plaintiff
and Respondent
[or Plaintiff and Respondent, Pro Se]

CHAPTER 31
PROCEDURE IN JUSTICES' COURTS

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Chapter Cross-References

Justices of the Peace, Art. VII, sec. 5 and 7, Mont. Const.
Courts and judicial officers generally, Title 3, ch. 1.
Appellate jurisdiction of District Court, 3-5-303.
Justices' Courts, Title 3, ch. 10.
Civil actions — form and commencement, Title 25, ch. 1, part 1.
Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.
Small claims procedure — Justice's Court, Title 25, ch. 35.
Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.
Attachment in Justice's Court, Title 27, ch. 18, part 15.
Criminal procedure in Justices' Courts, Title 46, ch. 17, parts 1 through 3.

Part 1
General Provisions

25-31-101. Issues which cannot be presented in justice's court. (1) The parties to an action in a justice's court cannot give evidence upon any question which involves the title or possession of real property or the legality of any tax, impost, assessment, toll, or municipal fine, nor can any issue presenting such question be tried by such court; provided that, in cases of forcible entry and unlawful detainer of which justices' courts have jurisdiction, any evidence otherwise competent may be given, and any question properly involved therein may be determined.

(2) A justice's court may not hear evidence on or try any issue involving the state's liability to make a payment of money, regardless of the basis of the claim against the state.

History: **En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc. 1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 4, Ch. 409, L. 1979.**

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

25-31-102. Transfer to district court — dismissal. (1) If it appears from the answer of the defendant, verified by oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice shall suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the pleadings from the docket to the clerk of the district court of the county. From the time of the certification of the pleadings or transcript to the clerk, the district court has the same jurisdiction over the action as if it had been commenced in the district court. When the action is certified to the district court, upon the answer of the defendant, the defendant shall file an undertaking, to be approved by the justice, to the effect that the defendant will pay all costs that may be awarded against the defendant on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to that issue. If the issue is not severable, the justice shall dismiss the entire action.

History: **En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc. 1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 5, Ch. 409, L. 1979; amd. Sec. 112, Ch. 575, L. 1981; amd. Sec. 494, Ch. 56, L. 2009.**

Cross-References

Civil jurisdiction of Justices' Courts, 3-10-301.

25-31-103 through 25-31-110 reserved.

25-31-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter and Titles 3 and 27 are applicable to justices' courts and the proceedings therein.

History: **En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 9717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 52, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 113, Ch. 575, L. 1981.**

Cross-References

What provisions of code applicable to Justices' Courts, 3-10-111.
Claim and delivery in Justice's Court, 27-17-102.

25-31-112. Fees. The following is the schedule of fees that, except as provided in 25-35-605, must be paid in every civil action in a justice's court:

(1) when a complaint is filed, the following fee to be paid by the plaintiff:
(a) $30 beginning July 1, 2013;
(b) $35 beginning July 1, 2014; and
(c) $40 beginning July 1, 2015;
(2) $20 when the defendant appears, to be paid by the defendant;
(3) $20 to be paid by the prevailing party when judgment is rendered. In cases in which judgment is entered by default, no charge except the fee provided in subsection (1) for the filing of the complaint may be made for any services, including issuing and return of execution.
(4) $20 for all services in an action in which judgment is rendered by confession;

(5) $20 for filing a notice of appeal and transcript on appeal, justifying and approving an undertaking on appeal, and transmitting papers to the district court with a certificate.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R.C.M. 1921; re-en. Sec. 4924, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1963; amd. Sec. 3, Ch. 420, L. 1975; amd. Sec. 1, Ch. 154, L. 1977; R.C.M. 1947, 25-301; amd. Sec. 28, Ch. 586, L. 1981; amd. Sec. 2, Ch. 492, L. 1983; amd. Sec. 2, Ch. 569, L. 1985; amd. Sec. 1, Ch. 26, L. 1989; amd. Sec. 1, Ch. 339, L. 2013.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

25-31-113. When fees payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid. However, nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 2, Ch. 55, L. 1921; re-en. Sec. 4925, R.C.M. 1921; re-en. Sec. 4925, R.C.M. 1935; R.C.M. 1947, 25-302.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.
Poor persons not required to prepay fees, 25-10-404.
Small claims procedure — fees, 25-35-608.

25-31-114. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R.C.M. 1921; re-en. Sec. 9722, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1967; R.C.M. 1947, 93-7712.

25-31-115. Deposit of money in lieu of undertaking. In civil cases arising in justices' courts wherein an undertaking is required by this chapter, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount required by said undertaking, which said sum of money shall be taken as security in place of said undertaking.

History: En. Sec. 1687, C. Civ. Proc. 1895; re-en. Sec. 7085, Rev. C. 1907; re-en. Sec. 9718, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 926; re-en. Sec. 9718, R.C.M. 1935; R.C.M. 1947, 93-7708; amd. Sec. 114, Ch. 575, L. 1981.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

25-31-116. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 611, p. 164, Bannack Stat.; re-en. Sec. 717, p. 180, Cod. Stat. 1871; re-en. Sec. 777, 1st Div. Rev. Stat. 1879; re-en. Sec. 797, 1st Div. Comp. Stat. 1887; amd. Sec. 1628, C. Civ. Proc. 1895; re-en. Sec. 7054, Rev. C. 1907; re-en. Sec. 9687, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 895; re-en. Sec. 9687, R.C.M. 1935; R.C.M. 1947, 93-7309.

25-31-117 and 25-31-118 reserved.

25-31-119. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice's Court of the State of Montana in and for the County of ...., before ...., Justice of the Peace.

....................................,
Plaintiff
vs.
...................................., INTERPLEADER AFFIDAVIT
Defendant
and
....................................,
Defendant

)
State of Montana) ss
)

................, being duly sworn, deposes and says: That ...., a defendant, resides at .... That ...., a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:
....
....
....
....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

....
Affiant

Subscribed and sworn to before me this .... day of ......, 20....

....
Justice of the Peace
....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are directed to appear and answer the interpleader claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 20..., at the hour of ......(AM)(PM) and to have with you all books, papers, and witnesses needed by you to establish your claim to the money.

You are further notified that in case you do not appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition of the money; and in addition, for costs of the action.

Dated this .... day of ...., 20...

....
Justice of the Peace
....
Clerk

History: En. Sec. 2, Ch. 326, L. 1991; amd. Sec. 58, Ch. 51, L. 1999.

Part 2
Venue

25-31-201. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-202. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-203. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-204. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

25-31-205. Actions for forcible entry or unlawful detainer. All actions for the recovery of the possession of real property must be commenced in the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; R.C.M. 1947, 93-320(part).

Cross-References

Forcible entry and unlawful detainer, Title 70, ch. 27.

Part 3
Change of Venue
(Repealed)

25-31-301. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 594, p. 160, Bannack Stat.; re-en. Sec. 700, p. 176, Cod. Stat. 1871; re-en. Sec. 760, 1st Div. Rev. Stat. 1879; re-en. Sec. 780, 1st Div. Comp. Stat. 1887; en. Sec. 1481, C. Civ. Proc. 1895; re-en. Sec. 6987, Rev. C. 1907; re-en. Sec. 9620, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 833; re-en. Sec. 9620, R.C.M. 1935; amd. Sec. 16, Ch. 491, L. 1973; former (2) superseded by Sup. Ct. Ord., 34 St. Rep. 26, Dec. 29, 1976; R.C.M. 1947, 93-6602; amd. Sec. 115, Ch. 575, L. 1981.

25-31-302. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-303. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-304. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

25-31-305. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1483, C. Civ. Proc. 1895; re-en. Sec. 6989, Rev. C. 1907; re-en. Sec. 9622, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 835; re-en. Sec. 9622, R.C.M. 1935; R.C.M. 1947, 93-6604.

25-31-306. Repealed. Sec. 63, Ch. 16, L. 1991.

History: Ap. p. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; Sec. 93-6605, R.C.M. 1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6605(part).

25-31-307. Repealed. Sec. 63, Ch. 16, L. 1991.

History: Ap. p. Sec. 1485, C. Civ. Proc. 1895; re-en. Sec. 6991, Rev. C. 1907; re-en. Sec. 9624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 837; re-en. Sec. 9624, R.C.M. 1935; Sec. 93-6606, R.C.M. 1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6606.

25-31-308. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; R.C.M. 1947, 93-6605(2); amd. Sec. 116, Ch. 575, L. 1981.

Part 4
Commencement of Action — Summons

25-31-401. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 554, p. 151, Bannack Stat.; re-en. Sec. 660, p. 168, Cod. Stat. 1871; re-en. Sec. 720, 1st Div. Rev. Stat. 1879; re-en. Sec. 740, 1st Div. Comp. Stat. 1887; en. Sec. 1500, C. Civ. Proc. 1895; re-en. Sec. 6993, Rev. C. 1907; re-en. Sec. 9626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 839; re-en. Sec. 9626, R.C.M. 1935; R.C.M. 1947, 93-6701.

25-31-402. Security for costs. A justice may, in all cases, require a deposit of money or an undertaking as security for costs of court before issuing a summons.

History: (1)En. Sec. 1501, C. Civ. Proc. 1895; re-en. Sec. 6994, Rev. C. 1907; re-en. Sec. 9627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 840; re-en. Sec. 9627, R.C.M. 1935; Sec. 93-6702, R.C.M. 1947; (2)En. Sec. 645, p. 171, Bannack Stat.; re-en. Sec. 750, p. 187, Cod. Stat. 1871; re-en. Sec. 810, 1st Div. Rev. Stat. 1879; re-en. Sec. 830, 1st Div. Comp. Stat. 1887; re-en. Sec. 1684, C. Civ. Proc. 1895; re-en. Sec. 7082, Rev. C. 1907; re-en. Sec. 9715, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 923; re-en. Sec. 9715, R.C.M. 1935; Sec. 93-7705, R.C.M. 1947; R.C.M. 1947, 93-6702, 93-7705; amd. Sec. 25, Ch. 16, L. 1991.

Cross-References

Time of service to be recorded on docket, 3-10-501.

Undertakings for security, Title 25, ch. 1, part 4.

Deposit of money in lieu of undertaking, 25-31-115.

25-31-403. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1502, C. Civ. Proc. 1895; re-en. Sec. 6995, Rev. C. 1907; re-en. Sec. 9628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 841; re-en. Sec. 9628, R.C.M. 1935; R.C.M. 1947, 93-6703.

25-31-404. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 556, p. 152, Bannack Stat.; re-en. Sec. 662, p. 169, Cod. Stat. 1871; re-en. Sec. 722, 1st Div. Rev. Stat. 1879; re-en. Sec. 742, 1st Div. Comp. Stat. 1887; En. Sec. 1505, C. Civ. Proc. 1895; re-en. Sec. 6998, Rev. C. 1907; re-en. Sec. 9631, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 844; re-en. Sec. 9631, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1939; amd. Sec. 17, Ch. 491, L. 1973; R.C.M. 1947, 93-6706.

25-31-405. Designating unknown person as defendant. When the plaintiff is ignorant of the name or part of the name of a defendant, that defendant may be designated in the summons and in any other process or proceeding in the action by a fictitious name or by as much of the defendant's name as is known, adding a description identifying the person intended. The person designated must be regarded as a defendant in the action and as sufficiently described in the action for all purposes. When the defendant's name or the remainder of the defendant's name is known or becomes known, the justice before whom the action is pending shall amend the proceedings already taken by the insertion of the true or full name in place of the fictitious name or part of a name, and all subsequent proceedings must be taken under the name inserted.

History: En. Sec. 1692, C. Civ. Proc. 1895; re-en. Sec. 7090, Rev. C. 1907; re-en. Sec. 9723, R.C.M. 1921; re-en. Sec. 9723, R.C.M. 1935; R.C.M. 1947, 93-7713; amd. Sec. 495, Ch. 56, L. 2009.

Cross-References

Designating unknown persons as defendants, 25-3-504.

Suing party by fictitious name, 25-5-103.

25-31-406. Time for answer or appearance. The time specified in the summons for the appearance of the defendant must be as follows:

(1) if an order of arrest is endorsed upon the summons, immediately;

(2) in all other cases, the summons must provide that the defendant shall answer in writing, file the answer, and serve a copy upon the plaintiff or the plaintiff's attorney within 20 days after service of the summons, exclusive of the day of service, and in case of the defendant's failure to appear or answer, judgment will be taken against the defendant by default for the relief demanded in the complaint.

History: En. Sec. 557, p. 152, Bannack Stat.; re-en. Sec. 663, p. 169, Cod. Stat. 1871; re-en. Sec. 723, 1st Div. Rev. Stat. 1879; re-en. Sec. 743, 1st Div. Comp. Stat. 1887; amd. Sec. 1506, C. Civ. Proc. 1895; re-en. Sec. 6999, Rev. C. 1907; re-en. Sec. 9632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 845; re-en. Sec. 9632, R.C.M. 1935; amd. Sec. 3, Ch. 34, L. 1937; amd. Sec. 1, Ch. 196, L. 1939; R.C.M. 1947, 93-6707; amd. Sec. 26, Ch. 16, L. 1991; amd. Sec. 496, Ch. 56, L. 2009.

Cross-References

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

25-31-407. Repealed. Sec. 18, Ch. 515, L. 2001.

History: (1)En. Sec. 1509, C. Civ. Proc. 1895; re-en. Sec. 7002, Rev. C. 1907; re-en. Sec. 9635, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 848; re-en. Sec. 9635, R.C.M. 1935; Sec. 93-6710, R.C.M. 1947; (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; R.C.M. 1947, 93-6710, 93-6711(part); amd. Sec. 27, Ch. 16, L. 1991; amd. Sec. 1, Ch. 343, L. 1993.

25-31-408. Repealed. Sec. 63, Ch. 16, L. 1991.

History: (1), (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 93-6711(part); amd. Sec. 117, Ch. 575, L. 1981.

25-31-409. Limitation on dismissal — alias summons. (1) A case is not subject to dismissal by the court for nonservice or failure to proceed during the time that the summons is valid.

(2) If the summons is returned without being served upon any or all of the defendants, the justice, upon the request of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within 2 years from the date of the filing of the complaint, issue as many alias summonses as may be requested by the plaintiff.

History: Ap. p. Sec. 1507, C. Civ. Proc. 1895; re-en. Sec. 7000, Rev. C. 1907; re-en. Sec. 9633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 846; re-en. Sec. 9633, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1937; Sec. 93-6708, R.C.M. 1947; Ap. p. Sec. 1508, C. Civ. Proc. 1895; re-en. Sec. 7001, Rev. C. 1907; re-en. Sec. 9634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 847; re-en. Sec. 9634, R.C.M. 1935; Sec. 93-6709, R.C.M. 1947; R.C.M. 1947, 93-6708, 93-6709; amd. Sec. 5, Ch. 457, L. 2007; amd. Sec. 1, Ch. 455, L. 2009.

Part 5
Pleadings

Part Cross-References

Pleadings to be recorded on docket, 3-10-501.

25-31-501. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1520, C. Civ. Proc. 1895; re-en. Sec. 7005, Rev. C. 1907; re-en. Sec. 9638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 851; re-en. Sec. 9638, R.C.M. 1935; R.C.M. 1947, 93-6801; amd. Sec. 118, Ch. 575, L. 1981.

25-31-502. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1, Ch. 168, L. 1967; R.C.M. 1947, 93-6802.1.

25-31-503. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 2, Ch. 168, L. 1967; amd. Sec. 16, Ch. 420, L. 1975; R.C.M. 1947, 93-6802.2.

25-31-504. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1522, C. Civ. Proc. 1895; re-en. Sec. 7007, Rev. C. 1907; re-en. Sec. 9640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 853; re-en. Sec. 9640, R.C.M. 1935; R.C.M. 1947, 93-6803.

25-31-505. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1524, C. Civ. Proc. 1895; re-en. Sec. 7009, Rev. C. 1907; re-en. Sec. 9642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 855; re-en. Sec. 9642, R.C.M. 1935; R.C.M. 1947, 93-6805.

25-31-506. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1525, C. Civ. Proc. 1895; re-en. Sec. 7010, Rev. C. 1907; re-en. Sec. 9643, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 856; re-en. Sec. 9643, R.C.M. 1935; R.C.M. 1947, 93-6806; amd. Sec. 2, Ch. 348, L. 1981.

25-31-507. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1528, C. Civ. Proc. 1895; re-en. Sec. 7013, Rev. C. 1907; re-en. Sec. 9646, R.C.M. 1921; re-en. Sec. 9646, R.C.M. 1935; R.C.M. 1947, 93-6809.

25-31-508 through 25-31-510 reserved.

25-31-511. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 588, p. 158, Bannack Stat.; re-en. Sec. 694, p. 175, Cod. Stat. 1871; re-en. Sec. 754, 1st Div. Rev. Stat. 1879; re-en. Sec. 774, 1st Div. Comp. Stat. 1887; en. Sec. 1531, C. Civ. Proc. 1895; re-en. Sec. 7016, Rev. C. 1907; re-en. Sec. 9649, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 886; re-en. Sec. 9649, R.C.M. 1935; R.C.M. 1947, 93-6812.

25-31-512. Admission of genuineness of signatures. If the plaintiff attaches to the complaint or files with the justice at the time of issuing the summons a copy of the promissory note, bill of exchange, other obligation for the payment of money, or other instrument upon which the action is brought, the defendant is considered to admit the genuineness of all the signatures to the instrument unless the defendant specifically denies the genuineness in the answer under oath. In case of a counterclaim, the same rule applies to the plaintiff.

History: En. Sec. 589, p. 159, Bannack Stat.; re-en. Sec. 695, p. 175, Cod. Stat. 1871; re-en. Sec. 755, 1st Div. Rev. Stat. 1879; re-en. Sec. 775, 1st Div. Comp. Stat. 1887; amd. Sec. 1532, C. Civ. Proc. 1895; re-en. Sec. 7017, Rev. C. 1907; re-en. Sec. 9650, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 887; re-en. Sec. 9650, R.C.M. 1935; R.C.M. 1947, 93-6813; amd. Sec. 497, Ch. 56, L. 2009.

25-31-513 through 25-31-520 reserved.

25-31-521. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part); amd. Sec. 121, Ch. 575, L. 1981.

25-31-522. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1530, C. Civ. Proc. 1895; re-en. Sec. 7015, Rev. C. 1907; re-en. Sec. 9648, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 860; re-en. Sec. 9648, R.C.M. 1935; amd. Sec. 15, Ch. 420, L. 1975; R.C.M. 1947, 93-6811.

25-31-523. Variance. A variance between the proof on the trial and the allegations in pleading must be disregarded as immaterial unless the court is satisfied that the adverse party has been misled to the party's prejudice by the variance.

History: En. Sec. 591, p. 159, Bannack Stat.; re-en. Sec. 697, p. 176, Cod. Stat. 1871; re-en. Sec. 757, 1st Div. Rev. Stat. 1879; re-en. Sec. 777, 1st Div. Comp. Stat. 1887; re-en. Sec. 1533, C. Civ. Proc. 1895; re-en. Sec. 7018, Rev. C. 1907; re-en. Sec. 9651, R.C.M. 1921; re-en. Sec. 9651, R.C.M. 1935; R.C.M. 1947, 93-6814; amd. Sec. 498, Ch. 56, L. 2009.

Part 6
Parties

25-31-601. Who may act as attorney. (1) Parties in justice's court may appear and act in person or by attorney.

(2) Any person, except the constable by whom the summons or jury process was served, may act as attorney for a party.

(3) Except as provided in 35-8-301, a member with a majority interest in a limited liability company as defined in 35-8-102 may act as attorney for the limited liability company.

History: En. Sec. 551, p. 151, Bannack Stat.; re-en. Sec. 657, p. 167, Cod. Stat. 1871; re-en. Sec. 717, 1st Div. Rev. Stat. 1879; re-en. Sec. 737, 1st Div. comp. Stat. 1887; amd. Sec. 1503, C. Civ. Proc. 1895; re-en. Sec. 6996, Rev. C. 1907; re-en. Sec. 9629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 842; re-en. Sec. 9629, R.C.M. 1935; R.C.M. 1947, 93-6704; amd. Sec. 1, Ch. 189, L. 2017.

Cross-References

Restrictions on practice of law by certain officers, 7-4-2210.
Parties in Small Claims Court proceedings, 25-35-505.

25-31-602. When guardian necessary — how appointed. When a minor, incompetent person, or person who has been committed pursuant to 53-21-127 is a party, the minor or other person shall appear either by general guardian, if the minor or other person has one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, the guardian ad litem must be appointed as follows:

(1) If the minor, incompetent person, or person who has been committed pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

(a) in the case of a minor who is 14 or more years old, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old, an incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application of a relative or friend;

(c) in a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the minor, incompetent person, or person who has been committed pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is returned or before the answer:

(a) in the case of a minor who is 14 or more years old and who applies before the summons is returned or at the time of the return, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old, an incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion.

History: En. Sec. 555, p. 151, Bannack Stat.; re-en. Sec. 661, p. 169, Cod. Stat. 1871; re-en. Sec. 721, 1st Div. Rev. Stat. 1879; re-en. Sec. 741, 1st Div. Comp. Stat. 1887; en. Sec. 1504, C. Civ. Proc. 1895; re-en. Sec. 6997, Rev. C. 1907; re-en. Sec. 9630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 843; re-en. Sec. 9630, R.C.M. 1935; R.C.M. 1947, 93-6705; amd. Sec. 122, Ch. 575, L. 1981; amd. Sec. 3, Ch. 490, L. 1997.

Cross-References

Appointment of guardian — documents requiring seals, 3-1-206.
Right of minor to bring civil action or other proceedings, 27-1-511.
When parental authority ceases, 40-6-234.
Enforcement of minor's rights, 41-1-202.

Part 7
Time of Trial — Postponements

25-31-701. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1511, C. Civ. Proc. 1895; re-en. Sec. 7004, Rev. C. 1907; re-en. Sec. 9637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 850; re-en. Sec. 9637, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1937; R.C.M. 1947, 93-6712.

25-31-702. Trial to be timely. Unless postponed as provided in this part or transferred to another court, the trial of the action may commence at the time set by the court as specified in the notice mentioned in Rule 20, Montana Justice and City Court Rules of Civil Procedure, and after the trial has commenced, there may be no adjournment for more than 24 hours at any one time until all the issues are disposed of.

History: En. Sec. 1590, C. Civ. Proc. 1895; re-en. Sec. 7033, Rev. C. 1907; re-en. Sec. 9666, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 873; re-en. Sec. 9666, R.C.M. 1935; R.C.M. 1947, 93-7101; amd. Sec. 1, Ch. 125, L. 1979; amd. Sec. 28, Ch. 16, L. 1991.

25-31-703. Postponement by motion of court. The court may, of its own motion, postpone the trial for not exceeding 4 months for good cause.

History: En. Sec. 1591, C. Civ. Proc. 1895; re-en. Sec. 7034, Rev. C. 1907; re-en. Sec. 9667, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 874; re-en. Sec. 9667, R.C.M. 1935; R.C.M. 1947, 93-7102; amd. Sec. 3, Ch. 569, L. 1985.

25-31-704. Postponement by consent of parties. The court may, by the consent of the parties given in writing or in open court, postpone the trial to a time agreed upon by the parties.

History: En. Sec. 1592, C. Civ. Proc. 1895; re-en. Sec. 7035, Rev. C. 1907; re-en. Sec. 9668, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 875; re-en. Sec. 9668, R.C.M. 1935; R.C.M. 1947, 93-7103.

25-31-705. Postponement upon application of party — proof required. The trial may be postponed upon the application of either party for a period not exceeding 4 months. The party making the application shall prove, by the party's own oath or otherwise, that the party cannot, for want of material testimony that the party expects to procure, safely proceed to trial and shall show in what respect the testimony expected is material and that the party has used due diligence to procure the testimony and has been unable to do so.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part); amd. Sec. 499, Ch. 56, L. 2009.

25-31-706. No postponement when expected evidence admitted. The court may require the party making the application to state, upon affidavit, the evidence that the party expects to obtain, and if the adverse party admits that the evidence would be given and that it is considered as actually given at the trial or offered and overruled as improper, the trial may not be postponed.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part); amd. Sec. 500, Ch. 56, L. 2009.

25-31-707. Procedure when defendant under arrest. (1) If the application is on the part of the plaintiff and the defendant is under arrest, a postponement for more than 3 hours discharges the defendant from custody. However, the action may proceed, and the defendant is subject to arrest on execution in the same manner as if the defendant had not been discharged.

(2) If the application is on the part of a defendant under arrest, before it can be granted, the defendant shall execute an undertaking, with two or more sufficient sureties to be approved by and in a sum to be fixed by the justice, to the effect that the defendant will be amenable to the process of the court during the pendency of the action and to the process that may be issued to enforce the judgment in the action or that the sureties will pay to the plaintiff the amount of any judgment that the plaintiff may recover in the action, not exceeding the amount specified

in the undertaking. On filing the undertaking specified in this subsection, the justice may order the defendant discharged from custody.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(2), (3); amd. Sec. 501, Ch. 56, L. 2009.**

Cross-References

Defendant to be taken before Justice of the Peace immediately, 27-16-1003.

25-31-708. Deposition of witnesses upon postponement. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance may be then taken by deposition before the justice and that the testimony so taken may be read on trial with the same effect and subject to the objections as if the witness were produced.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).**

25-31-709. Time limit on adjournment — undertaking. No adjournment may be granted upon the application of either party for a period longer than 10 days unless the opposite party consents or the party applying files an undertaking, in an amount fixed by the justice, with two sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

History: **En. Sec. 598, p. 162, Bannack Stat.; re-en. Sec. 704, p. 178, Cod. Stat. 1871; re-en. Sec. 764, 1st Div. Rev. Stat. 1879; re-en. Sec. 784, 1st Div. Comp. Stat. 1887; amd. Sec. 1594, C. Civ. Proc. 1895; re-en. Sec. 7037, Rev. C. 1907; re-en. Sec. 9670, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 877; re-en. Sec. 9670, R.C.M. 1935; R.C.M. 1947, 93-7105; amd. Sec. 123, Ch. 575, L. 1981.**

25-31-710. Pretrial conferences or hearings — appearance by telephone conference. (1) A party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing;

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county; and

(c) at least 10 days before the pretrial conference or other hearing, the party or the party's attorney intending to appear by telephone conference provides written notice to the court and to all parties or the attorneys for the parties.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs.

History: **En. Sec. 1, Ch. 515, L. 2001; amd. Sec. 6, Ch. 457, L. 2007.**

Part 8
Trial

25-31-801. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and

(2) of fact.

History: **En. Sec. 1600, C. Civ. Proc. 1895; re-en. Sec. 7038, Rev. C. 1907; re-en. Sec. 9671, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 878; re-en. Sec. 9671, R.C.M. 1935; R.C.M. 1947, 93-7201.**

25-31-802. When issues of fact arise. An issue of fact arises:

(1) whenever a material allegation in the complaint is controverted by the answer; and

(2) whenever the answer contains new matter which raises questions of fact and not merely an issue of law.

History: **En. Sec. 1602, C. Civ. Proc. 1895; re-en. Sec. 7040, Rev. C. 1907; re-en. Sec. 9673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 880; re-en. Sec. 9673, R.C.M. 1935; R.C.M. 1947, 93-7203; amd. Sec. 124, Ch. 575, L. 1981.**

25-31-803. By whom issues tried. (1) An issue of law must be tried by the court.

(2) An issue of fact must be tried by a jury unless a jury is waived, in which case it must be tried by the court.

History: En. Secs. 1603, 1604, C. Civ. Proc. 1895; re-en. Secs. 7041, 7042, Rev. C. 1907; re-en. Secs. 9674, 9675, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 881, 882; re-en. Secs. 9674, 9675, R.C.M. 1935; R.C.M. 1947, 93-7204, 93-7205.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Number of jurors in Justices' Courts, 3-15-107.

25-31-804. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1605, C. Civ. Proc. 1895; re-en. Sec. 7043, Rev. C. 1907; re-en. Sec. 9676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 883; re-en. Sec. 9676, R.C.M. 1935; R.C.M. 1947, 93-7206.

25-31-805 through 25-31-810 reserved.

25-31-811. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 600, p. 162, Bannack Stat.; re-en. Sec. 706, p. 178, Cod. Stat. 1871; re-en. Sec. 766, 1st Div. Rev. Stat. 1879; re-en. Sec. 786, 1st Div. Comp. Stat. 1887; amd. Sec. 1606, C. Civ. Proc. 1895; re-en. Sec. 7044, Rev. C. 1907; re-en. Sec. 9677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 884; re-en. Sec. 9677, R.C.M. 1935; R.C.M. 1947, 93-7207.

25-31-812. Repealed. Sec. 63, Ch. 16, L. 1991.

History: Ap. p. Sec. 604, p. 162, Bannack Stat.; re-en. Sec. 710, p. 178, Cod. Stat. 1871; re-en. Sec. 770, 1st Div. Rev. Stat. 1879; re-en. Sec. 790, 1st Div. Comp. Stat. 1887; amd. Sec. 1607, C. Civ. Proc. 1895; re-en. Sec. 7045, Rev. C. 1907; re-en. Sec. 9678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 885; re-en. Sec. 9678, R.C.M. 1935; Sec. 93-7208, R.C.M. 1947; Ap. p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-7208.

Part 9
Judgment

25-31-901. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1580, C. Civ. Proc. 1895; re-en. Sec. 7031, Rev. C. 1907; re-en. Sec. 9664, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 871; re-en. Sec. 9664, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1937; amd. Sec. 2, Ch. 91, L. 1939; R.C.M. 1947, 93-7001; amd. Sec. 125, Ch. 575, L. 1981.

25-31-902. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1581, C. Civ. Proc. 1895; re-en. Sec. 7032, Rev. C. 1907; re-en. Sec. 9665, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 872; re-en. Sec. 9665, R.C.M. 1935; R.C.M. 1947, 93-7002.

25-31-903. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

25-31-904. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 608, p. 163, Bannack Stat.; re-en. Sec. 714, p. 180, Cod. Stat. 1871; re-en. Sec. 774, 1st Div. Rev. Stat. 1879; re-en. Sec. 794, 1st Div. Comp. Stat. 1887; amd. Secs. 1622, 1623, C. Civ. Proc. 1895; re-en. Secs. 7048, 7049, Rev. C. 1907; re-en. Secs. 9681, 9682, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 891, 892; re-en. Secs. 9681, 9682, R.C.M. 1935; R.C.M. 1947, 93-7303, 93-7304.

25-31-905. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 715, p. 180, Cod. Stat. 1871; re-en. Sec. 775, 1st Div. Rev. Stat. 1879; re-en. Sec. 795, 1st Div. Comp. Stat. 1887; re-en. Sec. 1625, C. Civ. Proc. 1895; re-en. Sec. 7051, Rev. C. 1907; re-en. Sec. 9684, R.C.M. 1921; re-en. Sec. 9684, R.C.M. 1935; R.C.M. 1947, 93-7306.

25-31-906. Judgment when amount found due exceeds the jurisdiction of the court. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue.

History: En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 716, p. 180, Cod. Stat. 1871; re-en. Sec. 776, 1st Div. Rev. Stat. 1879; re-en. Sec. 796, 1st Div. Comp. Stat. 1887; re-en. Sec. 1626, C. Civ. Proc. 1895; re-en. Sec. 7052, Rev. C. 1907; re-en. Sec. 9685, R.C.M. 1921; Cal. C. Civ. Pro. Sec. 894; re-en. Sec. 9685, R.C.M. 1935; R.C.M. 1947, 93-7307.

Cross-References

Civil jurisdiction, 3-10-301.

25-31-907. Judgment when counterclaim has been established. Where a counterclaim is established which equals the plaintiff's demand, the judgment must be in favor of the defendant. Where it is less than the plaintiff's demand, the plaintiff must have judgment for the residue only. Where it exceeds the plaintiff's demand, the defendant must have judgment for the excess.

History: En. Sec. 1627, C. Civ. Proc. 1895; re-en. Sec. 7053, Rev. C. 1907; re-en. Sec. 9686, R.C.M. 1921; re-en. Sec. 9686, R.C.M. 1935; R.C.M. 1947, 93-7308.

25-31-908. Judgment when defendant subject to arrest. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

History: En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; R.C.M. 1947, 93-7305(part).

Cross-References

Costs in Justice's Court, Title 25, ch. 31, part 10.

25-31-909 and 25-31-910 reserved.

25-31-911. Repealed. Sec. 63, Ch. 16, L. 1991; sec. 4, Ch. 285, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1630, C. Civ. Proc. 1895; re-en. Sec. 7056, Rev. C. 1907; re-en. Sec. 9689, R.C.M. 1921; Cal. C. Civ. Proc. Sec 897; re-en. Sec. 9689, R.C.M. 1935; amd. Sec. 20, Ch. 491, L. 1973; R.C.M. 1947, 93-7311.

25-31-912. Repealed. Sec. 63, Ch. 16, L. 1991; sec. 4, Ch. 285, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1631, C. Civ. Proc. 1895; re-en. Sec. 7057, Rev. C. 1907; re-en. Sec. 9690, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 898; re-en. Sec. 9690, R.C.M. 1935; R.C.M. 1947, 93-7312.

25-31-913. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1632, C. Civ. Proc. 1895; amd. Sec. 1, p. 242, L. 1897; re-en. Sec. 7058, Rev. C. 1907; re-en. Sec. 9691, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 899; re-en. Sec. 9691, R.C.M. 1935; R.C.M. 1947, 93-7313; amd. Sec. 1, Ch. 285, L. 1991.

25-31-914. Lien on real property. The judgment rendered in a justice's court creates a lien upon any lands of the defendant upon the filing of a transcript of the original docket, certified by the clerk of the justice's court, with the office of the clerk of the district court of the county in which the lands are situated. When filed and from the time of filing, the judgment becomes a lien upon all real property in that county that is owned by the judgment debtor at the time or that the judgment debtor may afterwards and before the lien expires acquire and that is not exempt from execution. The lien continues for 10 years unless the judgment is previously satisfied.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1633, C. Civ. Proc. 1895; amd. Sec. 2, p. 243, L. 1897; re-en. Sec. 7059, Rev. C. 1907; re-en. Sec. 9692, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 900; re-en. Sec. 9692, R.C.M. 1935; R.C.M. 1947, 93-7314; amd. Sec. 2, Ch. 285, L. 1991; amd. Sec. 11, Ch. 515, L. 2001.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

25-31-915. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part).

Part 10
Costs

Part Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

25-31-1001. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1685, C. Civ. Proc. 1895; re-en. Sec. 7083, Rev. C. 1907; re-en. Sec. 9716, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 924; amd. Sec. 19, Ch. 177, L. 1935; re-en. Sec. 9716, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1937; R.C.M. 1947, 93-7706.

25-31-1002. How costs taxed. In a justice's or city court, a cost bill is not required to be filed, but the justice or judge shall tax the costs and make an itemized statement of all the costs incurred by each party in the docket.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part); amd. Sec. 502, Ch. 56, L. 2009.

Cross-References

Contents of docket, 3-10-501.

Costs generally allowable, 25-10-201.

25-31-1003. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 643, p. 171, Bannack Stat.; re-en. Sec. 748, p. 186, Cod. Stat. 1871; re-en. Sec. 808, 1st Div. Rev. Stat. 1879; re-en. Sec. 828, 1st Div. Comp. Stat. 1887; re-en. Sec. 1629, C. Civ. Proc. 1895; re-en. Sec. 7055, Rev. C. 1907; re-en. Sec. 9688, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 896; re-en. Sec. 9688, R.C.M. 1935; R.C.M. 1947, 93-7310.

25-31-1004. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part).

25-31-1005. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Part 11
Execution of Judgment

25-31-1101. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 615, p. 165, Bannack Stat.; re-en. Sec. 721, p. 181, Cod. Stat. 1871; re-en. Sec. 781, 1st Div. Rev. Stat. 1879; re-en. Sec. 801, 1st Div. Comp. Stat. 1887; amd. Sec. 1640, C. Civ. Proc. 1895; re-en. Sec. 7060, Rev. C. 1907; amd. Sec. 1, Ch. 38, L. 1921; re-en. Sec. 9693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 901; re-en. Sec. 9693, R.C.M. 1935; R.C.M. 1947, 93-7401; amd. Sec. 126, Ch. 575, L. 1981.

25-31-1102. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 616, p. 165, Bannack Stat.; amd. Sec. 722, p. 181, Cod. Stat. 1871; re-en. Sec. 782, 1st Div. Rev. Stat. 1879; re-en. Sec. 802, 1st Div. Comp. Stat. 1887; amd. Sec. 1641, C. Civ. Proc. 1895; amd. Sec. 1641, p. 243, L. 1897; re-en. Sec. 7061, Rev. C. 1907; re-en. Sec. 9694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 902; re-en. Sec. 9694, R.C.M. 1935; amd. Sec. 21, Ch. 491, L. 1973; R.C.M. 1947, 93-7402.

25-31-1103. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1642, C. Civ. Proc. 1895; re-en. Sec. 7062, Rev. C. 1907; re-en. Sec. 9695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 903; re-en. Sec. 9695, R.C.M. 1935; R.C.M. 1947, 93-7403.

25-31-1104. Manner of execution. The sheriff, constable, or levying officer to whom the execution is directed shall execute the the execution in the same manner as the sheriff or levying officer is required by the provisions of Title 25, chapter 13, to proceed upon executions. When an execution is directed to a constable, the constable is vested for that purpose with all the powers of the sheriff or levying officer.

History: En. Sec. 617, p. 165, Bannack Stat.; re-en. Sec. 723, p. 181, Cod. Stat. 1871; re-en. Sec. 783, 1st Div. Rev. Stat. 1879; re-en. Sec. 803, 1st Div. Comp. Stat. 1887; amd. Sec. 1643, C. Civ. Proc. 1895; re-en. Sec. 7063, Rev. C. 1907; re-en. Sec. 9696, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 904; re-en. Sec. 9696, R.C.M. 1935; R.C.M. 1947, 93-7404; amd. Sec. 7, Ch. 457, L. 2007.

Cross-References

Constables governed by law prescribing Sheriffs' duties, 3-10-702.

Execution and return of writ, Title 25, ch. 13, part 4.

25-31-1105. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1644, C. Civ. Proc. 1895; re-en. Sec. 7064, Rev. C. 1907; re-en. Sec. 9697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 905; re-en. Sec. 9697, R.C.M. 1935; R.C.M. 1947, 93-7405.

25-31-1106. Discharge of imprisoned judgment debtor. The provisions of part 3 of chapter 14 in relation to the examination and discharge of a defendant imprisoned on execution in a civil action shall apply to justices' courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

History: En. Sec. 673, p. 172, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1546, C. Civ. Proc. 1895; re-en. Sec. 7025, Rev. C. 1907; re-en. Sec. 9658, R.C.M. 1921; re-en. Sec. 9658, R.C.M. 1935; R.C.M. 1947, 93-6907.

25-31-1107 through 25-31-1110 reserved.

25-31-1111. Collection of judgment against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against the officer in the name of the office, when the judgment is to be paid by the county, an execution may not issue upon the judgment, but the judgment must be paid in the same manner as other county charges. When collected, the judgment must be paid by the county treasurer to the proper person to whom the judgment is adjudged upon the delivery of a proper voucher for payment.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811; amd. Sec. 503, Ch. 56, L. 2009.

Cross-References

Payments of judgments against governmental entities except state, 2-9-316.
Public officers not to be personally taxed for costs or damages, 25-10-701.
Judgments against county or county officer, 25-13-205.
Garnishment of public officers, 25-13-504.
Governmental property exempt from execution, 25-13-613.

CHAPTER 32
PROCEDURE IN CITY COURTS
(Repealed)

Part 1 — General Provisions (Repealed)

Part 1
General Provisions
(Repealed)

25-32-101. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1703, C. Civ. Proc. 1895; re-en. Sec. 7095, Rev. C. 1907; re-en. Sec. 9728, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 933; re-en. Sec. 9728, R.C.M. 1935; R.C.M. 1947, 93-7804; amd. Sec. 9, Ch. 543, L. 1987.

25-32-102. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1700, C. Civ. Proc. 1895; re-en. Sec. 7092, Rev. C. 1907; re-en. Sec. 9725, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 929; re-en. Sec. 9725, R.C.M. 1935; R.C.M. 1947, 93-7801; amd. Sec. 10, Ch. 543, L. 1987.

25-32-103. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1701, C. Civ. Proc. 1895; re-en. Sec. 7093, Rev. C. 1907; re-en. Sec. 9726, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 930; re-en. Sec. 9726, R.C.M. 1935; R.C.M. 1947, 93-7802; amd. Sec. 11, Ch. 543, L. 1987.

25-32-104. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1702, C. Civ. Proc. 1895; re-en. Sec. 7094, Rev. C. 1907; re-en. Sec. 9727, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 931; re-en. Sec. 9727, R.C.M. 1935; R.C.M. 1947, 93-7803; amd. Sec. 12, Ch. 543, L. 1987.

CHAPTER 33
APPEAL TO DISTRICT COURT FROM JUSTICES' AND CITY COURTS

Part 1 — Filing the Appeal

25-33-101. Exclusive method of review.
25-33-102. Time for appeal.
25-33-103. How appeal taken.
25-33-104. Papers to be transmitted.

Part 2 — Undertaking on Appeal — Stay of Execution

25-33-201. Undertaking on appeal.
25-33-202. Undertaking when prevailing party appeals.
25-33-203. Justification of sureties.
25-33-204. Stay of execution when undertaking filed.
25-33-205. Deposit of money in lieu of undertaking.
25-33-206. Waiver of undertaking or deposit.
25-33-207. Defective undertaking.
25-33-208. Repealed.

Part 3 — Proceedings in District Court

25-33-301. Trial de novo — pleadings — conduct of trial.
25-33-302. Procedure upon reversal on issue of law.
25-33-303. Appeal from judgment by default.
25-33-304. Dismissal of appeal upon delay — costs and damages.
25-33-305. Costs when appeal unsuccessful.
25-33-306. Effect of judgment of district court.

Chapter Cross-References

Appeal of criminal cases from Justices' or City Courts, 46-17-311.

Part 1
Filing the Appeal

Part Cross-References

City attorney to prosecute, 3-11-301.

25-33-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in this chapter and not otherwise. A party aggrieved may appeal in the cases prescribed in this chapter.

History: Ap. p. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8001, R.C.M. 1947; Ap. p. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8002, R.C.M. 1947; R.C.M. 1947, 93-8001(part), 93-8002(part).

25-33-102. Time for appeal. Any party dissatisfied with the judgment rendered in a civil action in a city or justice's court may appeal therefrom to the district court of the county at any time within 30 days after the rendition of the judgment.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part).

Cross-References

Kinds of jurisdiction, 3-5-301.
Appellate jurisdiction, 3-5-303.

25-33-103. How appeal taken. The appeal is taken by serving a copy of the notice of appeal on the adverse party or the adverse party's attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part); amd. Sec. 504, Ch. 56, L. 2009.

25-33-104. Papers to be transmitted. Upon the filing of the notice of appeal and the undertaking when required by 25-33-201, 25-33-203, and 25-33-205, the justice or judge shall, within 10 days, upon the payment of the fees for filing, transmit to the clerk of the district court a certified copy of the docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking. The justice or judge may be compelled by the district court, by an order entered upon motion, to transmit the papers and may be fined for neglect or refusal to transmit the papers. A certified copy of the order may be served on the justice or judge by the party or the party's attorney.

History: En. Sec. 639, p. 170, Bannack Stat.; re-en. Sec. 744, p. 186, Cod. Stat. 1871; re-en. Sec. 804, 1st Div. Rev. Stat. 1879; re-en. Sec. 824, 1st Div. Comp. Stat. 1887; en. Sec. 1762, C. Civ. Proc. 1895; re-en. Sec. 7123, Rev. C. 1907; re-en. Sec. 9756, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 977; re-en. Sec. 9756, R.C.M. 1935; R.C.M. 1947, 93-7903; amd. Sec. 127, Ch. 575, L. 1981; amd. Sec. 1, Ch. 63, L. 1991; amd. Sec. 505, Ch. 56, L. 2009.

Part 2
Undertaking on Appeal — Stay of Execution

Part Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

25-33-201. Undertaking on appeal. (1) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking is filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal is withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against the appellant in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking is filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made in the action if the appeal is withdrawn or dismissed or pay any judgment and costs that may be recovered against the appellant in the action in the district court and obey any order made by the court in the action.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the judgment cannot be stayed unless a written undertaking is executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of the property by the appellant, the appellant will not commit or suffer to be committed any waste on the property; and

(b) if the appeal is dismissed or withdrawn or the judgment is affirmed or judgment is recovered against the appellant in the action in the district court, the appellant will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property or the appellant will pay any judgment and costs that may be recovered against the appellant in the action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this section.

History: En. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; R.C.M. 1947, 93-7904(part); amd. Sec. 128, Ch. 575, L. 1981; amd. Sec. 2, Ch. 63, L. 1991; amd. Sec. 506, Ch. 56, L. 2009.

25-33-202. Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of $100 and conditioned that the party will pay all costs that may be awarded against the party and obey any order of court made in the action.

History: En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part); amd. Sec. 507, Ch. 56, L. 2009.

25-33-203. Justification of sureties. The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the undertaking, and unless they or other sureties justify before the justice or a judge of the district court of the county in which such action has been tried within 5 days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given. The sureties on the undertakings mentioned in this part must justify as provided in 33-26-102.

History: Ap. p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec.

9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947; Ap. p. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; Sec. 93-7905, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-7905(part).

25-33-204. Stay of execution when undertaking filed. If an execution is issued, on the filing of the undertaking, the justice or judge shall direct the officer to stay all proceedings on the execution. The officer shall, upon the payment of the officer's fees for services rendered on the execution, relinquish all property levied upon and deliver the property to the judgment debtor, together with all money collected from sales or otherwise. If the officer's fees on the execution are not paid, the officer may retain as much of the property or proceeds of the property as may be necessary to pay the fees.

History: En. Sec. 642, p. 170, Bannack Stat.; re-en. Sec. 747, p. 186, Cod. Stat. 1871; re-en. Sec. 807, 1st Div. Rev. Stat. 1879; re-en. Sec. 827, 1st Div. Comp. Stat. 1887; amd. Sec. 1765, C. Civ. Proc. 1895; re-en. Sec. 7126, Rev. C. 1907; re-en. Sec. 9759, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 979; re-en. Sec. 9759, R.C.M. 1935; R.C.M. 1947, 93-7906; amd. Sec. 508, Ch. 56, L. 2009.

25-33-205. Deposit of money in lieu of undertaking. Whenever an undertaking is required on appeal by the provisions of this chapter, a deposit in the court below of the amount of the judgment appealed from plus $300 or, if the judgment is for the recovery of specific personal property, the value of the property plus $300 or, if the party in whose favor the judgment is rendered appeals, $100 is equivalent to filing the undertaking. The justice or judge shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.

History: Ap.p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947; Ap.p. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8013, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-8013(part); amd. Sec. 129, Ch. 575, L. 1981.

Cross-References

Deposit of money in lieu of undertaking, 25-1-401, 25-31-115.

25-33-206. Waiver of undertaking or deposit. In all cases where an undertaking is required on appeal by the provisions of this chapter, the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8013(part).

25-33-207. Defective undertaking. No appeal shall be dismissed for insufficiency of the undertaking thereon or for any defect or irregularity therein if a good and sufficient undertaking be filed in the district court at or before the hearing of the motion to dismiss the appeal, which undertaking must be approved by the district judge.

History: En. Sec. 1767, C. Civ. Proc. 1895; re-en. Sec. 7128, Rev. C. 1907; re-en. Sec. 9761, R.C.M. 1921; re-en. Sec. 9761, R.C.M. 1935; R.C.M. 1947, 93-7908.

25-33-208. Repealed. Sec. 2, Ch. 455, L. 2009.

History: En. Sec. 2, Ch. 393, L. 1999.

Part 3
Proceedings in District Court

25-33-301. Trial de novo — pleadings — conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court of record pursuant to 3-10-101 is on the record as provided in 3-10-115. The appeal from a city court of record pursuant to 3-11-101 is on the record as provided in 3-11-110.

History: (1)En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; Sec. 93-7902, R.C.M. 1947; (2) En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; Sec. 93-7907, R.C.M. 1947; R.C.M. 1947, 93-7902(part), 93-7907(part); amd. Sec. 11, Ch. 389, L. 2003; amd. Sec. 10, Ch. 557, L. 2005; amd. Sec. 5, Ch. 38, L. 2011.

Cross-References

Trials, Title 25, ch. 7.

25-33-302. Procedure upon reversal on issue of law. When a judgment is reversed or set aside on a question of law arising in the justice's or city court, the district court must either try the case anew or render a judgment.

History: En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).

Cross-References

Judgment, Title 25, ch. 9.
Issues defined — types of issues, 25-31-801.

25-33-303. Appeal from judgment by default. There is no appeal from a judgment by default rendered in a justice's or city court except on questions of law which appear on the face of the papers or proceedings and except in cases when the justice's or city court has abused its discretion in setting aside or refusing to set aside a default or judgment. If the judgment by default is set aside, the district court must allow pleadings to be filed and try the case.

History: En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).

Cross-References

Issues defined — types of issues, 25-31-801.

25-33-304. Dismissal of appeal upon delay — costs and damages. For a failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed, with costs; and if it appear to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25% of the judgment appealed from.

History: En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).

25-33-305. Costs when appeal unsuccessful. If the party appealing fails to reduce the judgment against the party or to enlarge the judgment in the party's favor appealed from $10 or more or reverse the judgment in the district court, the party may not recover any costs of appeal.

History: En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part); amd. Sec. 509, Ch. 56, L. 2009.

25-33-306. Effect of judgment of district court. Judgments rendered in the district court on appeal shall have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

History: En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).

Cross-References

Execution of judgment, Title 25, ch. 13.
Proceedings in aid of execution, Title 25, ch. 14.

CHAPTER 34

SMALL CLAIMS PROCEDURE — DISTRICT COURT (Repealed)

Part 1 — General Provisions — Jurisdiction (Repealed)

Part 2 — Procedure Before Trial (Repealed)

Part 3 — The Trial (Repealed)

Part 4 — Judgment — Appeal (Repealed)

Part 1

General Provisions — Jurisdiction (Repealed)

25-34-101. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328.

25-34-102. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(1); amd. Sec. 1, Ch. 530, L. 1987; amd. Sec. 3, Ch. 438, L. 1989; amd. Sec. 44, Ch. 10, L. 1993.

25-34-103. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(2); amd. Sec. 4, Ch. 438, L. 1989.

25-34-104. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-331 by Sec. 10, Ch. 519, L. 1975; R.C.M. 1947, 93-331.

25-34-105. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-330 by Sec. 9, Ch. 519, L. 1975; R.C.M. 1947, 93-330; amd. Sec. 8, Ch. 409, L. 1979.

25-34-106. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. Sec. 3, Ch. 530, L. 1987; amd. Sec. 1, Ch. 326, L. 1991.

Part 2

Procedure Before Trial (Repealed)

25-34-201. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-326, 93-332 by Secs. 5, 11, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part), 93-332; amd. Sec. 2, Ch. 530, L. 1987.

25-34-202. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).

25-34-203. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-333 by Sec. 12, Ch. 519, L. 1975; R.C.M. 1947, 93-333; amd. Sec. 130, Ch. 575, L. 1981.

25-34-204. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-335 by Sec. 14, Ch. 519, L. 1975; R.C.M. 1947, 93-335.

25-34-205. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-334 by Sec. 13, Ch. 519, L. 1975; R.C.M. 1947, 93-334.

25-34-206. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-336 by Sec. 15, Ch. 519, L. 1975; R.C.M. 1947, 93-336.

25-34-207. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-337 by Sec. 16, Ch. 519, L. 1975; R.C.M. 1947, 93-337; amd. Sec. 5, Ch. 438, L. 1989.

25-34-208. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(1), (2).

Part 3
The Trial
(Repealed)

25-34-301. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-340 by Sec. 19, Ch. 519, L. 1975; R.C.M. 1947, 93-340.

25-34-302. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-339 by Sec. 18, Ch. 519, L. 1975; R.C.M. 1947, 93-339.

25-34-303. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-341 by Sec. 20, Ch. 519, L. 1975; R.C.M. 1947, 93-341.

Part 4
Judgment — Appeal
(Repealed)

25-34-401. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-342 by Sec. 21, Ch. 519, L. 1975; R.C.M. 1947, 93-342.

25-34-402. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(3).

25-34-403. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-343 by Sec. 22, Ch. 519, L. 1975; R.C.M. 1947, 93-343; amd. Sec. 131, Ch. 575, L. 1981.

25-34-404. Repealed. Sec. 3, Ch. 241, L. 1997.
History: En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).

CHAPTER 35
SMALL CLAIMS PROCEDURE — JUSTICE'S COURT

Part 1 — General Provisions — Jurisdiction (Repealed)

Part 2 — Procedure Before Trial (Repealed)

Part 3 — The Trial (Repealed)

Part 4 — Judgment — Appeal (Repealed)

Part 5 — General Provisions

25-35-501. Purpose.
25-35-502. Jurisdiction.
25-35-503. Removal from district court.
25-35-504. Venue.
25-35-505. Parties — representation.
25-35-506 and 25-35-507 reserved.
25-35-508. Interpleader actions.

Part 6 — Procedure Before Trial

25-35-601. Commencement of action — assistance to claimant.
25-35-602. Form of complaint and order of court/notice to defendant.
25-35-603. Hearing date.
25-35-604. Service on defendant — return.
25-35-605. Removal to justice's court — effect of failure to remove.
25-35-606. Defendant's counterclaim.
25-35-607. No further pleadings.
25-35-608. Fees.
25-35-609. Pretrial conferences or hearings — appearance by telephone conference.

Part 7 — The Trial

25-35-701. Proceedings to be informal.
25-35-702. Witnesses — evidence — subpoena power.
25-35-703. Record of proceedings.

Part 8 — Judgment — Appeal

25-35-801. Entry of judgment.
25-35-802. Costs.
25-35-803. Appeal to district court — commencement and scope.

25-35-804. Record on appeal.
25-35-805. Use of transcripts or tapes by district court.
25-35-806. Attorney fees upon appeal or removal.
25-35-807. Execution of judgment.

Chapter Cross-References

Small claims division, Title 3, ch. 10, part 10.

Part 1
General Provisions — Jurisdiction (Repealed)

25-35-101. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345.

25-35-102. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(1).

25-35-103. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(2).

25-35-104. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-348 by Sec. 4, Ch. 572, L. 1977; R.C.M. 1947, 93-348.

25-35-105. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-354 by Sec. 10, Ch. 572, L. 1977; R.C.M. 1947, 93-354; amd. Sec. 9, Ch. 409, L. 1979.

Part 2
Procedure Before Trial (Repealed)

25-35-201. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-349, 93-361 by Secs. 5, 17, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part), 93-361(1); amd. Sec. 1, Ch. 501, L. 1979.

25-35-202. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-350 by Sec. 6, Ch. 572, L. 1977; R.C.M. 1947, 93-350.

25-35-203. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-352 by Sec. 8, Ch. 572, L. 1977; R.C.M. 1947, 93-352; amd. Sec. 2, Ch. 501, L. 1979.

25-35-204. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-351 by Sec. 7, Ch. 572, L. 1977; R.C.M. 1947, 93-351.

25-35-205. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-353 by Sec. 9, Ch. 572, L. 1977; R.C.M. 1947, 93-353.

25-35-206. Renumbered 25-35-212. Code Commissioner, 1979.

25-35-207. Renumbered 25-35-213. Code Commissioner, 1979.

25-35-208 through 25-35-210 reserved.

25-35-211. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. Sec. 3, Ch. 501, L. 1979.

25-35-212. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part); amd. Sec. 4, Ch. 501, L. 1979; Sec. 25-35-206, MCA 1979; redes. 25-35-212 by Code Commissioner, 1979.

25-35-213. Repealed. Sec. 29, Ch. 586, L. 1981.

History: En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(1), (2); amd. Sec. 5, Ch. 501, L. 1979; Sec. 25-35-207, MCA 1979; redes. 25-35-213 by Code Commissioner, 1979.

Part 3
The Trial
(Repealed)

25-35-301. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part).

25-35-302. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-355 by Sec. 11, Ch. 572, L. 1977; R.C.M. 1947, 93-355.

25-35-303. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-356 by Sec. 12, Ch. 572, L. 1977; R.C.M. 1947, 93-356.

Part 4
Judgment — Appeal
(Repealed)

25-35-401. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-362 by Sec. 18, Ch. 572, L. 1977; R.C.M. 1947, 93-362.

25-35-402. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(3).

25-35-403. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-357 by Sec. 13, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part).

25-35-404. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-357, 93-358 by Secs. 13, 14, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part), 93-358.

25-35-405. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-359 by Sec. 15, Ch. 572, L. 1977; R.C.M. 1947, 93-359.

25-35-406. Repealed. Sec. 29, Ch. 586, L. 1981.
History: En. 93-363 by Sec. 19, Ch. 572, L. 1977; R.C.M. 1947, 93-363.

Part 5
General Provisions

25-35-501. Purpose. It is the purpose of this chapter to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: En. Sec. 1, Ch. 586, L. 1981.

Cross-References

Small claims division — purpose, 3-10-1001.

25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $7,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed $7,000.

History: En. Sec. 2, Ch. 586, L. 1981; amd. Sec. 6, Ch. 438, L. 1989; amd. Sec. 3, Ch. 326, L. 1991; amd. Sec. 45, Ch. 10, L. 1993; amd. Sec. 5, Ch. 284, L. 2011.

Cross-References

Justices' Courts — jurisdiction, 3-10-301.
Small claims division — jurisdiction — removal from District Court, 3-10-1004.
Defendant's counterclaim, 25-35-606.

25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $7,000. The small claims court shall hear any action so removed from the district court.

History: En. Sec. 3, Ch. 586, L. 1981; amd. Sec. 7, Ch. 438, L. 1989; amd. Sec. 46, Ch. 10, L. 1993; amd. Sec. 6, Ch. 284, L. 2011.

Cross-References

Small claims division — jurisdiction — removal from District Court, 3-10-1004.

25-35-504. Venue. Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

History: En. Sec. 4, Ch. 586, L. 1981.

Cross-References

Small claims division — location — hours, 3-10-1003.

25-35-505. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency of the state.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) (a) Individuals may represent themselves in a small claims court.

(b) A partnership may be represented by a partner or one of its employees.

(c) A union may be represented by a union member or union employee.

(d) A corporation may be represented by one of its directors, officers, or employees.

(e) Except as provided in 35-8-301, a limited liability company as defined in 35-8-102 may be represented by a member with a majority interest in the limited liability company.

(f) An association may be represented by one of its members or by an employee of the association.

(g) Any other kind of organization or entity may be represented by one of its members or employees.

(4) Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) A party may not file an assigned claim in the small claims court unless it has been assigned pursuant to 27-1-718.

(6) Except for claims under 27-1-718, a party may not file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: En. Sec. 5, Ch. 586, L. 1981; amd. Sec. 1, Ch. 213, L. 1985; amd. Sec. 2, Ch. 135, L. 1997; amd. Sec. 1, Ch. 207, L. 1999; amd. Sec. 2, Ch. 189, L. 2017.

Cross-References

When guardian necessary — how appointed, 25-31-602.
Right to bring action or assert defense, Title 27, ch. 1, part 5.
Enforcement of minor's rights, 41-1-202.

25-35-506 and 25-35-507 reserved.

25-35-508. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE
JUSTICE'S COURT OF .... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE.

..................................,
Plaintiff
vs.
..................................,
Defendant
and
....,
Defendant

INTERPLEADER AFFIDAVIT

)
State of Montana) ss
)

..............., being duly sworn, deposes and says: That ...., a defendant, resides at .... That ...., a defendant, resides at .... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

....

....

....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

....
Affiant

Subscribed and sworn to before me this .... day of ...., 20...

....
Justice of the Peace

....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are directed to appear and answer the interpleader claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 20..., at the hour of ......(AM)(PM) and to have with you all books, papers, and witnesses needed by you to establish your claim to the money.

You are further notified that in case you do not appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition of the money, and in addition, for costs of the action.

Dated this .... day of ...., 20...

....
Justice of the Peace

....
Clerk

History: En. Sec. 4, Ch. 326, L. 1991; amd. Sec. 59, Ch. 51, L. 1999.

Part 6
Procedure Before Trial

25-35-601. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace or the justice's clerk and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing the complaint or instruct the clerk to provide the assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or the justice's clerk shall give the plaintiff a copy when the plaintiff appears to execute a complaint, and a copy must be attached to the order of the court/notice to defendant.

History: En. Sec. 6, Ch. 586, L. 1981; amd. Sec. 3, Ch. 492, L. 1983; amd. Sec. 510, Ch. 56, L. 2009.

25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court must be made in substantially the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF .... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

....
Plaintiff
vs.
....
....
Defendant(s)

Complaint
Case No. .....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that the defendant is indebted to plaintiff in the sum of $......, for .... which sum is now due, owing, and unpaid despite demands for the payment of the sum, together with plaintiff's costs expended in this action.

Dated this ...... day of ...., 20...

....
Plaintiff

....
Plaintiff's address

Subscribed and sworn to before me this ...... day of ...., 20...

....
Justice of the peace
By: ....
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):
You are directed to appear and answer the complaint at:

....
....
on .... at ......
Reset for ..... at ......
Reset for ..... at ......
Reset for ..... at ......

and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim. You are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are further notified that within 10 days of service upon you of this complaint and order you may remove this action from the small claims court to justice's court and that your failure to remove constitutes a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of Process of the county, greetings:
Make legal service and return on the defendant at .....
Dated this .... day of ...., 20...

....
Justice of the peace
By: ....
Clerk, small claims division

History: En. Sec. 7, Ch. 586, L. 1981; amd. Sec. 13, Ch. 3, L. 1985; amd. Sec. 60, Ch. 51, L. 1999.

Cross-References
Removal to Justice's Court, 25-35-605.

25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order must be determined by the justice of the peace or by the justice's clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint must be made upon the defendant not less than 5 days prior to the date set for the defendant's appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or the justice's clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

History: En. Sec. 8, Ch. 586, L. 1981; amd. Sec. 511, Ch. 56, L. 2009.

25-35-604. Service on defendant — return. (1) The original of the order and notice must be shown to the defendant, and a copy of the order and notice along with a copy of the sworn complaint must be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or the justice's clerk.

History: En. Secs. 9, 10, Ch. 586, L. 1981; amd. Sec. 512, Ch. 56, L. 2009.

Cross-References

Fees of Sheriff, 7-32-2141.

Mileage and expenses of Sheriff in general, 7-32-2143.

25-35-605. Removal to justice's court — effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 10 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in justice's court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, except rules of pleading but including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and a fee may not be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of the right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of that fact prior to commencement of the hearing.

History: En. Secs. 17, 18, Ch. 586, L. 1981; amd. Sec. 4, Ch. 492, L. 1983; amd. Sec. 513, Ch. 56, L. 2009.

25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service must be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed $6,500. If a counterclaim or setoff is asserted in excess of $6,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged, leaving the defendant to prosecute the balance of the defendant's claim in an appropriate justice or district court action.

(3) The counterclaim must be made in substantially the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF................ COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

....
Plaintiff
vs.
....
....
Defendant(s)

Counterclaim
Case No. .....

....

Comes now the defendant, being first duly sworn, and alleges that the defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $........, for ....

....
which sum is now due, together with defendant's costs expended in this action.

Dated this ...... day of ...., 20...

....
Defendant

....
Defendant's address

Subscribed and sworn to before me this..... day of........., 20...

....
Justice of the peace

By: ....
Clerk, small claims division

History: **En. Sec. 11, Ch. 586, L. 1981; amd. Sec. 8, Ch. 438, L. 1989; amd. Sec. 61, Ch. 51, L. 1999; amd. Sec. 7, Ch. 284, L. 2011.**

25-35-607. No further pleadings. No form of pleading other than the complaint, the order of the court/notice to defendant, and the counterclaim of the defendant, if there is one, is allowed.

History: **En. Sec. 12, Ch. 586, L. 1981.**

25-35-608. Fees. (1) The clerk of the justice's court shall collect a fee of:

(a) $20 from the plaintiff upon the filing of the sworn complaint; and

(b) $10 from the defendant upon the defendant's appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

History: **En. Sec. 13, Ch. 586, L. 1981; amd. Sec. 2, Ch. 26, L. 1989; amd. Sec. 514, Ch. 56, L. 2009; amd. Sec. 2, Ch. 339, L. 2013.**

Cross-References

Poor persons not required to prepay fees, 25-10-404.

25-35-609. Pretrial conferences or hearings — appearance by telephone conference. (1) At the discretion of the court, a party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; and

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs.

History: **En. Sec. 1, Ch. 515, L. 2001.**

Part 7
The Trial

25-35-701. Proceedings to be informal. The hearing and disposition of small claims actions shall be informal.

History: **En. Sec. 14, Ch. 586, L. 1981.**

Cross-References

Small claims division — purpose, 3-10-1001, 25-35-501.

25-35-702. Witnesses — evidence — subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at the hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence that the judge considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

History: **En. Sec. 15, Ch. 586, L. 1981; amd. Sec. 515, Ch. 56, L. 2009.**

Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.
Subpoenas and witnesses, Title 26, ch. 2.

25-35-703. Record of proceedings. All civil actions tried in a small claims court shall be recorded either electronically or stenographically.

History: **En. Sec. 16, Ch. 586, L. 1981.**

Part 8
Judgment — Appeal

25-35-801. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make findings and enter judgment.

History: **En. Sec. 19, Ch. 586, L. 1981; amd. Sec. 516, Ch. 56, L. 2009.**

Cross-References

Docket entries, 3-10-1005.

25-35-802. Costs. The prevailing party in an action before the small claims court is entitled to the party's costs.

History: **En. Sec. 20, Ch. 586, L. 1981; amd. Sec. 517, Ch. 56, L. 2009.**

Cross-References

Costs, Title 25, ch. 31, part 10.

25-35-803. Appeal to district court — commencement and scope. (1) If either party is dissatisfied with the judgment of the small claims court, the party may appeal to the district court of the county where the judgment was rendered. An appeal must be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal must be limited to questions of law.

History: **En. Sec. 21, Ch. 586, L. 1981; amd. Sec. 518, Ch. 56, L. 2009.**

Cross-References

Kinds of jurisdiction, 3-5-301.
Appellate jurisdiction, 3-5-303.
Appeals to District Court from Justices' and City Courts, Title 25, ch. 33.

25-35-804. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings must be transmitted to the district court or the appeal must be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by the justice to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

History: **En. Sec. 22, Ch. 586, L. 1981; amd. Sec. 519, Ch. 56, L. 2009.**

Cross-References

Papers to be transmitted, 25-33-104.

25-35-805. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice's court, but in its discretion it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

History: **En. Sec. 23, Ch. 586, L. 1981.**

25-35-806. Attorney fees upon appeal or removal. (1) If the parties are represented by counsel on appeal, the court may grant the prevailing party reasonable attorney fees in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff reasonable attorney fees, if any.

History: **En. Sec. 25, Ch. 586, L. 1981; amd. Sec. 520, Ch. 56, L. 2009.**

25-35-807. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

History: En. Sec. 24, Ch. 586, L. 1981.

Cross-References

Execution of judgment in Justice's Court generally, Title 25, ch. 31, part 11.

CHAPTERS 36 THROUGH 39
RESERVED

CHAPTER 40
ALTERNATIVE DISPUTE RESOLUTION

Part 1 — Uniform Collaborative Law Act

25-40-101. Short title.
25-40-102. Definitions.
25-40-103. Collaborative law participation agreement — requirements.
25-40-104. Beginning and concluding collaborative law process.
25-40-105. Proceedings pending before tribunal — status report.
25-40-106. Emergency order.
25-40-107. Approval of agreement by tribunal.
25-40-108. Disqualification of collaborative lawyer and lawyers in associated law firm.
25-40-109. Low-income parties.
25-40-110. Governmental entity as party.
25-40-111. Disclosure of information.
25-40-112. Standards of professional responsibility and mandatory reporting not affected.
25-40-113. Appropriateness of collaborative law process.
25-40-114. Coercive or violent relationship.
25-40-115. Confidentiality of collaborative law communication.
25-40-116. Privilege against disclosure for collaborative law communication — admissibility — discovery.
25-40-117. Waiver and preclusion of privilege.
25-40-118. Limits of privilege.
25-40-119. Authority of tribunal in case of noncompliance.
25-40-120. Uniformity of application and construction.
25-40-121. Relation to electronic signatures in global commerce act.

Part 1
Uniform Collaborative Law Act

25-40-101. Short title. This part may be cited as the "Uniform Collaborative Law Act".

History: En. Sec. 1, Ch. 200, L. 2015.

25-40-102. Definitions. (1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(a) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(b) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(a) sign a collaborative law participation agreement; and

(b) are represented by collaborative lawyers.

(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, that is described in a collaborative law participation agreement.

(6) "Law firm" means:

(a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(b) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Proceeding" means:

(a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery; or

(b) a legislative hearing or similar process.

(11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means:

(a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

(b) a legislative body conducting a hearing or similar process.

History: En. Sec. 2, Ch. 200, L. 2015.

25-40-103. Collaborative law participation agreement — requirements. (1) A collaborative law participation agreement must:

(a) be in a record;

(b) be signed by the parties;

(c) state the parties' intention to resolve a collaborative matter through a collaborative law process under this part;

(d) describe the nature and scope of the matter;

(e) identify the collaborative lawyer who represents each party in the process; and

(f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this part.

History: En. Sec. 3, Ch. 200, L. 2015.

25-40-104. Beginning and concluding collaborative law process. (1) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) resolution of a collaborative matter as evidenced by a signed record;

(b) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(c) termination of the process.

(4) A collaborative law process terminates:

(a) when a party gives notice to other parties in a record that the process is ended;

(b) when a party:

(i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(ii) in a pending proceeding related to the matter:

(A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(B) requests that the proceeding be scheduled for trial; or

(C) takes a similar action requiring notice to be sent to the parties; or

(c) except as otherwise provided by subsection (7), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (5) is sent to the parties:

(a) the unrepresented party engages a successor collaborative lawyer; and

(b) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(ii) the agreement is amended to identify the successor collaborative lawyer; and

(iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

History: En. Sec. 4, Ch. 200, L. 2015.

25-40-105. Proceedings pending before tribunal — status report. (1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to 25-40-106 and 25-40-107 and subsection (3) of this section, the filing operates as an application for a stay of the proceeding.

(2) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (1) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under subsection (1) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(4) A tribunal may not consider a communication made in violation of subsection (3).

(5) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

History: En. Sec. 5, Ch. 200, L. 2015.

25-40-106. Emergency order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party.

History: En. Sec. 6, Ch. 200, L. 2015.

25-40-107. Approval of agreement by tribunal. A tribunal may approve an agreement resulting from a collaborative law process.

History: En. Sec. 7, Ch. 200, L. 2015.

25-40-108. Disqualification of collaborative lawyer and lawyers in associated law firm. (1) Except as provided in subsection (3), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as provided in 25-40-109 and 25-40-110 and subsection (3) of this section, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (1).

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(a) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(b) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or household member if a successor lawyer is not immediately available to represent that person.

(4) If subsection (3)(b) applies, a collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party or household member only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

History: **En. Sec. 8, Ch. 200, L. 2015.**

25-40-109. Low-income parties. (1) The disqualification provision contained in 25-40-108(1) applies to a collaborative lawyer representing a party with or without a fee.

(2) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under 25-40-108(1) is associated may represent a party without a fee in the collaborative matter or a matter related to the collaborative matter if:

(a) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(b) the collaborative law participation agreement so provides; and

(c) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

History: **En. Sec. 9, Ch. 200, L. 2015.**

25-40-110. Governmental entity as party. (1) The disqualification provision contained in 25-40-108(1) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(2) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(a) the collaborative law participation agreement so provides; and

(b) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

History: **En. Sec. 10, Ch. 200, L. 2015.**

25-40-111. Disclosure of information. Except as provided by law, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

History: **En. Sec. 11, Ch. 200, L. 2015.**

25-40-112. Standards of professional responsibility and mandatory reporting not affected. This part does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

History: **En. Sec. 12, Ch. 200, L. 2015.**

25-40-113. Appropriateness of collaborative law process. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(a) after signing an agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(b) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by 25-40-108(3), 25-40-109(2), or 25-40-110(2).

History: **En. Sec. 13, Ch. 200, L. 2015.**

25-40-114. Coercive or violent relationship. (1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(a) the party or the prospective party requests beginning or continuing a process; and

(b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

History: **En. Sec. 14, Ch. 200, L. 2015.**

25-40-115. Confidentiality of collaborative law communication. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law.

History: **En. Sec. 15, Ch. 200, L. 2015.**

25-40-116. Privilege against disclosure for collaborative law communication — admissibility — discovery. (1) Subject to 25-40-117 and 25-40-118, a collaborative law communication is privileged under subsection (2) of this section, is not subject to discovery, and is not admissible in evidence.

(2) In a proceeding, the following privileges apply:

(a) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(b) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

History: **En. Sec. 16, Ch. 200, L. 2015.**

25-40-117. Waiver and preclusion of privilege. (1) A privilege under 25-40-116 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(2) A person that makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under 25-40-116, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

History: En. Sec. 17, Ch. 200, L. 2015.

25-40-118. Limits of privilege. (1) There is no privilege under 25-40-116 for a collaborative law communication that is:

(a) available to the public or made during a session of a collaborative law process that is open or is required by law to be open to the public;

(b) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(c) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(d) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(2) The privileges under 25-40-116 for a collaborative law communication do not apply to the extent that a communication is:

(a) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(b) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult unless the department of public health and human services is a party to or otherwise participates in the process.

(3) There is no privilege under 25-40-116 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest of protecting confidentiality, and the collaborative law communication is sought or offered in:

(a) a court proceeding involving a felony or misdemeanor; or

(b) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(4) If a collaborative law communication is subject to an exception under subsection (2) or (3), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(5) Disclosure or admission of evidence excepted from the privilege under subsection (2) or (3) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(6) The privileges under 25-40-116 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

History: En. Sec. 18, Ch. 200, L. 2015.

25-40-119. Authority of tribunal in case of noncompliance. (1) If an agreement fails to meet the requirements of 25-40-103 or a lawyer fails to comply with 25-40-114 or 25-40-115, a tribunal may still find that the parties intended to enter into a collaborative law participation agreement if they:

(a) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) reasonably believed they were participating in a collaborative law process.

(2) If a tribunal makes the findings specified in subsection (1) and the interests of justice require, the tribunal may:

(a) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) apply the disqualification provisions of 25-40-104, 25-40-105, 25-40-108, 25-40-109, and 25-40-110; and

(c) apply a privilege under 25-40-116.

History: En. Sec. 19, Ch. 200, L. 2015.

25-40-120. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 20, Ch. 200, L. 2015.

25-40-121. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 21, Ch. 200, L. 2015.

TITLE 26

EVIDENCE

Ch.
1. Statutory Provisions on Evidence.
2. Subpoenas and Witnesses.
3. Effect of Former Judgments and Orders.
Chapters 4 through 9 reserved.
10. Montana Rules of Evidence.

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Part 1
Definitions and Miscellaneous Provisions

26-1-101. General definitions. (1) "Direct examination" is the first examination of a witness on a particular matter. "Cross-examination" is the examination of a witness by a party other than the direct examiner.

(2) "Evidence" is the means of ascertaining in a judicial proceeding the truth respecting a question of fact, including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.

(3) A "leading question" is a question which suggests to the witness the answer which the examining party desires.

(4) "Proof" is the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit.

History: (1)En. Sec. 3373, C. Civ. Proc. 1895; re-en. Sec. 8018, Rev. C. 1907; re-en. Sec. 10662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2045; re-en. Sec. 10662, R.C.M. 1935; Sec. 93-1901-4, R.C.M. 1947; (2)En. Sec. 3100, C. Civ. Proc. 1895; re-en. Sec. 7844, Rev. C. 1907; re-en. Sec. 10488, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1823; re-en. Sec. 10488, R.C.M. 1935; Sec. 93-301-1, R.C.M. 1947; (3)En. Sec. 3374, C. Civ. Proc. 1895; re-en. Sec. 8019, Rev. C. 1907; re-en. Sec. 10663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2046; re-en. Sec. 10663, R.C.M. 1935; Sec. 93-1901-5, R.C.M. 1947; (4)En. Sec. 3101, C. Civ. Proc. 1895; re-en. Sec. 7845, Rev. C. 1907; re-en. Sec. 10489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1824; re-en. Sec. 10489, R.C.M. 1935; Sec. 93-301-2, R.C.M. 1947; (5)En.

Sec. 3160, C. Civ. Proc. 1895; re-en. Sec. 7889, Rev. C. 1907; re-en. Sec. 10533, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1878; re-en. Sec. 10533, R.C.M. 1935; Sec. 93-701-1, R.C.M. 1947; R.C.M. 1947, 93-301-1, 93-301-2, 93-701-1, 93-1901-4, 93-1901-5; amd. Sec. 1, Ch. 72, L. 1983.

Cross-References

Oaths — form, 1-6-102.
Order of trial, 25-7-301.
Affidavits, Title 26, ch. 1, part 10.
Witness defined — criminal proceedings, 45-2-101.

26-1-102. Definitions — kinds of evidence. (1) "Circumstantial evidence" is that which tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.

(2) (a) "Conclusive evidence" is that which the law does not permit to be contradicted.

(b) No evidence is by law made conclusive unless so declared by statute.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

(4) "Cumulative evidence" is additional evidence of the same character to the same point.

(5) "Direct evidence" is that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact.

(6) "Prima facie evidence" is that which proves a particular fact until contradicted and overcome by other evidence.

History: (1)(a)En. Sec. 3114, C. Civ. Proc. 1895; re-en. Sec. 7858, Rev. C. 1907; re-en. Sec. 10502, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1837; re-en. Sec. 10502, R.C.M. 1935; Sec. 93-301-15, R.C.M. 1947; (1)(b)En. Sec. 3280, C. Civ. Proc. 1895; re-en. Sec. 7971, Rev. C. 1907; re-en. Sec. 10615, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1978; re-en. Sec. 10615, R.C.M. 1935; Sec. 93-1401-9, R.C.M. 1947; (2)En. Sec. 3115, C. Civ. Proc. 1895; re-en. Sec. 7859, Rev. C. 1907; re-en. Sec. 10503, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1838; re-en. Sec. 10503, R.C.M. 1935; Sec. 93-301-16, R.C.M. 1947; (3)En. Sec. 3108, C. Civ. Proc. 1895; re-en. Sec. 7852, Rev. C. 1907; re-en. Sec. 10496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1831; re-en. Sec. 10496, R.C.M. 1935; Sec. 93-301-9, R.C.M. 1947; (4)(a)En. Sec. 3109, C. Civ. Proc. 1895; re-en. Sec. 7853, Rev. C. 1907; re-en. Sec. 10497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1832; re-en. Sec. 10497, R.C.M. 1935; Sec. 93-301-10, R.C.M. 1947; (4)(b)En. Sec. 3260, C. Civ. Proc. 1895; re-en. Sec. 7956, Rev. C. 1907; re-en. Sec. 10600, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1957; re-en. Sec. 10600, R.C.M. 1935; Sec. 93-1301-1, R.C.M. 1947; (5)En. Sec. 3110, C. Civ. Proc. 1895; re-en. Sec. 7854, Rev. C. 1907; re-en. Sec. 10498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1833; re-en. Sec. 10498, R.C.M. 1935; Sec. 93-301-11, R.C.M. 1947; R.C.M. 1947, 93-301-9, 93-301-10, 93-301-11, 93-301-15, 93-301-16, 93-1301-1, 93-1401-9; amd. Sec. 2, Ch. 72, L. 1983.

Cross-References

Inference defined, 26-1-501.
Presumptions, Title 26, ch. 1, part 6.
Effect of former judgments and orders, Title 26, ch. 3.
Prima facie evidence by third-party documents, 30-1-202.

26-1-103. Declaration, act, or omission which is a part of the transaction. Where the declaration, act, or omission forms part of a transaction which is itself the fact in dispute or evidence of that fact, such declaration, act, or omission is evidence as part of the transaction.

History: En. Sec. 604, p. 196, L. 1877; re-en. Sec. 604, 1st Div. Rev. Stat. 1879; re-en. Sec. 622, 1st Div. Comp. Stat. 1887; re-en. Sec. 3126, C. Civ. Proc. 1895; re-en. Sec. 7867, Rev. C. 1907; re-en. Sec. 10511, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1850; re-en. Sec. 10511, R.C.M. 1935; R.C.M. 1947, 93-401-7.

Cross-References

Course of dealing and usage of trade, 30-1-205.

26-1-104. Evidence of third person's obligation. Where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is prima facie evidence between the parties.

History: En. Sec. 605, p. 197, L. 1877; re-en. Sec. 605, 1st Div. Rev. Stat. 1879; re-en. Sec. 623, 1st Div. Comp. Stat. 1887; re-en. Sec. 3127, C. Civ. Proc. 1895; re-en. Sec. 7868, Rev. C. 1907; re-en. Sec. 10512, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1851; re-en. Sec. 10512, R.C.M. 1935; R.C.M. 1947, 93-401-8.

Cross-References

Obligations in general, Title 28, ch. 1.
Course of dealing and usage of trade, 30-1-205.

26-1-105. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979.

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part)(10).

26-1-106. Explanation of alterations in a writing. The party producing a writing as genuine that has been altered or appears to have been altered after its execution in a part material to the question in dispute shall account for the appearance or alteration. The party may show that the alteration was made by another without the party's concurrence, was made with the consent of the parties affected by the alteration, or was otherwise properly or innocently made or that the alteration did not change the meaning or language of the instrument. If the party does that, the party may give the writing in evidence, but not otherwise.

History: En. Sec. 365, p. 119, Bannack Stat.; re-en. Sec. 423, p. 221, L. 1867; re-en. Sec. 497, p. 136, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 644, 1st Div. Comp. Stat. 1887; amd. Sec. 3291, C. Civ. Proc. 1895; re-en. Sec. 7973, Rev. C. 1907; re-en. Sec. 10617, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1982; re-en. Sec. 10617, R.C.M. 1935; R.C.M. 1947, 93-1501-2; amd. Sec. 521, Ch. 56, L. 2009.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.
When extrinsic evidence concerning written agreement may be considered, 28-2-905.
How written contract may be altered by parties, 28-2-1602.
Final written expression — parol or extrinsic evidence, 30-2-202.

26-1-107. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3233, C. Civ. Proc. 1895; re-en. Sec. 7946, Rev. C. 1907; re-en. Sec. 10590, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1942; re-en. Sec. 10590, R.C.M. 1935; R.C.M. 1947, 93-1101-13.

26-1-108. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3236, C. Civ. Proc. 1895; re-en. Sec. 7949, Rev. C. 1907; re-en. Sec. 10593, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1945; re-en. Sec. 10593, R.C.M. 1935; R.C.M. 1947, 93-1101-16.

26-1-109. Legislative conduct inadmissible. The conduct of the legislative branch in passing legislation is not admissible in a bad faith analysis or for the purpose of awarding costs or attorney fees against a government entity defending an enactment of the legislature.

History: En. Sec. 2, Ch. 450, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 450, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 5, 2025.

Retroactive Applicability: Section 5, Ch. 450, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all legislation passed and approved on or after commencement of the 69th legislative session."

Cross-References

Award of costs against government entity when suit or defense is frivolous or in bad faith — legislative branch conduct is not considered, 25-10-711.

Part 2
Province of Court and Jury

26-1-201. Questions of law. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, must be decided by the court.

History: En. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; R.C.M. 1947, 93-2501-2; amd. Sec. 3, Ch. 72, L. 1983.

Cross-References

Issues of law to be decided by court, 25-7-102.
Libel and slander, Title 27, ch. 1, part 8.
Criminal prosecutions — questions of law and fact, 46-16-103.
Criminal defamation — jury to determine law and fact, 46-16-103.

26-1-202. Questions of fact. If a trial is by jury, all questions of fact other than those mentioned in 26-1-201 must be decided by the jury, and all evidence thereon must be addressed to them, except as otherwise provided by law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1; amd. Sec. 4, Ch. 72, L. 1983.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.
Jury — definition and duty, 3-15-101.
Jury to decide fact — evidence addressed to them, 25-7-103.
No issues of fact — directed verdict, 25-7-302.
Waiver of findings of fact, 25-7-601.

Trial upon agreed statement of facts, 25-7-602.
Criminal prosecutions — questions of law and fact, 46-16-103.

26-1-203. Who to judge effect and value of evidence. The jury, subject to the control of the court, is the judge of the effect and value of evidence addressed to it, except when the evidence is declared to be conclusive. The court is the judge of the effect and value of evidence addressed to it.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part); amd. Sec. 5, Ch. 72, L. 1983.

Cross-References

Evidence addressed to jury, 25-7-103.
No issues of fact — directed verdict, 25-7-302.

Part 3
Weight and Effect of Evidence

26-1-301. One witness sufficient to prove a fact. The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except perjury and treason.

History: En. Sec. 598, p. 195, L. 1877; re-en. Sec. 598, 1st Div. Rev. Stat. 1879; re-en. Sec. 616, 1st Div. Comp. Stat. 1887; re-en. Sec. 3120, C. Civ. Proc. 1895; re-en. Sec. 7861, Rev. C. 1907; re-en. Sec. 10505, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1844; re-en. Sec. 10505, R.C.M. 1935; R.C.M. 1947, 93-401-1.

Cross-References

Perjury — evidence required, 45-7-201.
Treason — evidence required, 46-16-202.

26-1-302. Witness presumed to speak the truth — how presumption rebutted. A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of a witness's credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness's testimony. The matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness's testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness's character for truth, honesty, or integrity;

(6) the extent of the witness's capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which the witness testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness's testimony.

History: En. Sec. 601, p. 195, L. 1877; re-en. Sec. 601, 1st Div. Rev. Stat. 1879; re-en. Sec. 619, 1st Div. Comp. Stat. 1887; re-en. Sec. 3123, C. Civ. Proc. 1895; re-en. Sec. 7864, Rev. C. 1907; re-en. Sec. 10508, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1847; re-en. Sec. 10508, R.C.M. 1935; R.C.M. 1947, 93-401-4; amd. Sec. 6, Ch. 72, L. 1983; amd. Sec. 522, Ch. 56, L. 2009.

Cross-References

Perjury, 45-7-201.

26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses that do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of the witness's testimony is to be distrusted in others;

(4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

History: **En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part)(1) thru (4), (6), (7); amd. Sec. 7, Ch. 72, L. 1983; amd. Sec. 523, Ch. 56, L. 2009.**

Cross-References

Presumption regarding weaker, less satisfactory evidence, 26-1-602.
Person legally accountable for conduct of another, 45-2-302.
Testimony of person legally accountable, 46-16-213.
Instructions to jury — criminal actions, 46-16-401.

Part 4
Burdens of Proof

26-1-401. Who has burden of producing evidence. The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against that party in the absence of further evidence.

History: **En. Sec. 3290, C. Civ. Proc. 1895; re-en. Sec. 7972, Rev. C. 1907; re-en. Sec. 10616, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1981; re-en. Sec. 10616, R.C.M. 1935; R.C.M. 1947, 93-1501-1; amd. Sec. 8, Ch. 72, L. 1983; amd. Sec. 524, Ch. 56, L. 2009.**

Cross-References

Awarding exemplary or punitive damages — special burden of proof, 27-1-221.
Homicide trial — burden of state, 45-5-111, 45-5-112.

26-1-402. Who has burden of persuasion. Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense the party is asserting.

History: **En. Sec. 623, p. 201, L. 1877; re-en. Sec. 623, 1st Div. Rev. Stat. 1879; re-en. Sec. 641, 1st Div. Comp. Stat. 1887; re-en. Sec. 3145, C. Civ. Proc. 1895; re-en. Sec. 7886, Rev. C. 1907; re-en. Sec. 10530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1869; re-en. Sec. 10530, R.C.M. 1935; R.C.M. 1947, 93-401-26; amd. Sec. 9, Ch. 72, L. 1983; amd. Sec. 525, Ch. 56, L. 2009.**

26-1-403. Instructions to jury on standard of proof required to meet burden of persuasion. The jury is to be instructed by the court on all proper occasions:

(1) that in civil cases the affirmative of the issue must be proved, and when the evidence is contradictory, the decision must be made according to the preponderance of the evidence; and

(2) that in criminal cases guilt must be established beyond reasonable doubt.

History: **En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part).**

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.
Awarding exemplary or punitive damages — special burden of proof, 27-1-221.
Criminal defendants — presumption of innocence — reasonable doubt of guilt, 46-16-204.

Part 5
Inferences

Part Cross-References

Conduct of jury after case submitted to it, 25-7-403.

26-1-501. Inference defined. An "inference" is a deduction which the trier of fact may make from the evidence.

History: **En. Sec. 3261, C. Civ. Proc. 1895; re-en. Sec. 7957, Rev. C. 1907; re-en. Sec. 10601, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1958; re-en. Sec. 10601, R.C.M. 1935; R.C.M. 1947, 93-1301-2; amd. Sec. 10, Ch. 72, L. 1983.**

26-1-502. When an inference arises. An inference must be founded:

(1) on a fact legally proved; and

(2) on a deduction from that fact that is warranted by a consideration of the usual propensities or passions of people, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

History: **En. Sec. 3263, C. Civ. Proc. 1895; re-en. Sec. 7959, Rev. C. 1907; re-en. Sec. 10603, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1960; re-en. Sec. 10603, R.C.M. 1935; R.C.M. 1947, 93-1301-4; amd. Sec. 526, Ch. 56, L. 2009.**

Cross-References

When issues of fact to be decided by jury, 25-7-103.
Conduct of jury after case submitted to it, 25-7-403.

Part 6
Presumptions

26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of the declaration, act, or omission, whenever the party has, by the declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon that belief;

(2) that a tenant is not permitted to deny the title of the landlord at the time of the commencement of the relation;

(3) the judgment or order of a court, which is declared by statute to be conclusive;

(4) any other presumption that, by statute, is expressly made conclusive.

History: En. Sec. 3265, C. Civ. Proc. 1895; re-en. Sec. 7961, Rev. C. 1907; re-en. Sec. 10605, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1962; re-en. Sec. 10605, R.C.M. 1935; R.C.M. 1947, 93-1301-6; amd. Sec. 11, Ch. 72, L. 1983; amd. Sec. 527, Ch. 56, L. 2009.

Cross-References

Own wrong — no advantage, 1-3-208.
List of statutory conclusive presumptions, see Part I, Table D, in compiler's comments, Title 26, ch. 1, part 6.
Effect of former judgments and orders, Title 26, ch. 3.
Conclusive judgments, 26-3-201.
Consideration, Title 28, ch. 2, part 8.
Legitimacy of children born in wedlock, 40-6-201.
Criminal intent — knowingly and purposely defined, 45-2-101.
Adverse possession — relation of landlord and tenant, 70-19-412.

26-1-602. Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of the person's voluntary act.

(4) A person takes ordinary care of the person's own concerns.

(5) Evidence willfully suppressed would be adverse if produced.

(6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.

(7) Money paid by one to another was due the latter.

(8) A thing delivered by one to another belonged to the latter.

(9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has been paid.

(10) Prior rent or installments have been paid when a receipt for later rent or installments is produced.

(11) Things that a person possesses are owned by the person.

(12) A person is the owner of property if the person exercises acts of ownership over it or there is common reputation of the person's ownership.

(13) A person in possession of an order on the person for the payment of money or the delivery of a thing has paid the money or delivered the thing accordingly.

(14) A person acting in a public office was regularly appointed to it.

(15) Official duty has been regularly performed.

(16) A court or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of the court's or judge's jurisdiction.

(17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) All matters within an issue were laid before the jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) Private transactions have been fair and regular.

(20) The ordinary course of business has been followed.

(21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(23) A writing is truly dated.

(24) A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons when there is an identity of names.

(26) A person not heard from in 5 years is dead.

(27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) Persons acting as partners have entered into a contract of partnership.

(30) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) A child born in lawful wedlock is legitimate.

(32) A thing once proved to exist continues as long as is usual with things of that nature.

(33) The law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed the property to the particular person. This presumption applies when it is necessary to perfect the title of the person or the person's successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of rights, the owner intended to dedicate it to the public for that purpose.

(38) There was a good and sufficient consideration for a written contract.

History: En. Sec. 3266, C. Civ. Proc. 1895; re-en. Sec. 7962, Rev. C. 1907; re-en. Sec. 10606, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1963; re-en. Sec. 10606, R.C.M. 1935; amd. Sec. 9, Ch. 20, L. 1951; R.C.M. 1947, 93-1301-7; amd. Sec. 12, Ch. 72, L. 1983; amd. Sec. 41, Ch. 18, L. 1995.

Cross-References

Presumption that internal references in MCA are to law as it may be amended or changed, 1-2-108.

No presumption of legislative intent drawn from code classification or arrangement, 1-11-103.

MCA — prima facie the official laws of state, 1-11-103.

Adoption of administrative rules — objection by committee — presumption of agency correctness reversed, 2-4-406.

Offering weaker and less satisfactory evidence — jury instruction, 26-1-303.

List of other statutory and common-law disputable presumptions, see Parts II and III, Table D, in compiler's comments, Title 26, ch. 1, part 6.

Conclusive order or judgment of court, 26-3-201.

Consideration, Title 28, ch. 2, part 8.

Partnership — rules for determining existence, 35-10-202.

Common-law marriages, 40-1-403.

Legitimacy of children born in wedlock, 40-6-201.

Presumption of offensive or aggressive purpose, 45-8-305.

Presumption of innocence, 46-16-204.

Child restraints in motor vehicles — failure to use — no presumption of negligence, 61-9-422.

Delivery of property — grant, 70-1-508.

Presumption and evidence of death — period, 72-1-108.

26-1-603. Books containing laws presumed correct. Books printed or published under the authority of a sister state or foreign country and purporting to contain the statutes, code, or other written law of such state or country or proved to be commonly admitted in the tribunals of such state or country as evidence of the written law thereof are admissible in this state as evidence of such law.

History: En. Sec. 370, p. 120, Bannack Stat.; re-en. Sec. 428, p. 221, L. 1867; re-en. Sec. 502, p. 137, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 646, 1st Div. Comp. Stat. 1887; en. Sec. 3188, C. Civ. Proc. 1895; re-en. Sec. 7906, Rev. C. 1907; re-en. Sec. 10550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1900; re-en. Sec. 10550, R.C.M. 1935; R.C.M. 1947, 93-1001-12.

26-1-604. When recitals in statutes conclusive. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further.

The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

History: En. Sec. 3191, C. Civ. Proc. 1895; re-en. Sec. 7909, Rev. C. 1907; re-en. Sec. 10553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1903; re-en. Sec. 10553, R.C.M. 1935; R.C.M. 1947, 93-1001-15.

Cross-References

Public and private statutes, 1-1-106.

26-1-605. Entries in official books and records prima facie evidence. Entries in public or other official books or records made in the performance of the officer's duty by a public officer of this state or any other person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated in the book or record.

History: En. Sec. 3208, C. Civ. Proc. 1895; re-en. Sec. 7926, Rev. C. 1907; re-en. Sec. 10570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1920; re-en. Sec. 10570, R.C.M. 1935; R.C.M. 1947, 93-1001-32; amd. Sec. 528, Ch. 56, L. 2009.

Cross-References

Public records generally, Title 2, ch. 6.
Reproduction of records — Secretary of State — evidentiary effect, 2-15-406.
County records — substitution by reproduction, 7-4-2222.
Role and duties of County Clerk, 7-4-2611.
Municipal clerk, Title 7, ch. 4, part 45.

26-1-606. Entry made by officer or board prima facie evidence. An entry made by an officer or board of officers or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

History: En. Sec. 3214, C. Civ. Proc. 1895; re-en. Sec. 7932, Rev. C. 1907; re-en. Sec. 10576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1926; re-en. Sec. 10576, R.C.M. 1935; R.C.M. 1947, 93-1001-38.

Cross-References

Public records, Title 2, ch. 6.
Duties of Secretary of State — public records, 2-15-406.
Duties of County Clerk, 7-4-2611.
Municipal clerk, Title 7, ch. 4, part 45.

26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent was in a position to know the facts stated therein, are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law.

History: En. Sec. 3237, C. Civ. Proc. 1895; re-en. Sec. 7950, Rev. C. 1907; re-en. Sec. 10594, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1946; re-en. Sec. 10594, R.C.M. 1935; R.C.M. 1947, 93-1101-17; amd. Sec. 13, Ch. 72, L. 1983.

26-1-608. Photographs of items allegedly taken or converted — admissibility procedure. (1) In a prosecution for a violation of 45-6-301, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in a proceeding, hearing, or trial as if the items themselves were introduced as evidence so long as responding law enforcement personnel have designated a person to be responsible for properly photographing the items and preserving the photographic evidence.

(2) The designated person shall write a report in connection with photographing the items. The report must include a written description of the items alleged to have been taken or converted, the name of the owner from whom the items were allegedly taken or the store or establishment, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting officer, the date the photographs were taken, and a statement by the photographer that the photographs accurately represent the items in question.

(3) Upon the filing of the photograph and the report written pursuant to subsection (2) with the law enforcement agency or court holding the items as evidence, the items must be returned to their owner or the proprietor or manager of the store or establishment.

History: En. Sec. 3, Ch. 739, L. 1991; amd. Sec. 1, Ch. 213, L. 2019.

26-1-609 through 26-1-620 reserved.

26-1-621. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 1, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-39.

26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, made by any officer or employee of the United States authorized by law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, as the case may be.

History: En. Sec. 2, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-40; amd. Sec. 14, Ch. 72, L. 1983.

Cross-References

Charges for tuition — waivers, 20-25-421.

Uniform Probate Code — evidence of death, 72-1-108.

26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or certified copy of a finding, report, or record purporting to have been signed by an officer or employee of the United States as described in that section is prima facie considered to have been signed and issued by the officer or employee pursuant to law, and the person signing the finding, report, or record is prima facie considered to have acted within the scope of the officer's or employee's authority. If a copy purports to have been certified by a person authorized by law to certify the finding, report, or record, the certified copy must be prima facie evidence of the person's authority to certify.

History: En. Sec. 3, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-41; amd. Sec. 15, Ch. 72, L. 1983; amd. Sec. 529, Ch. 56, L. 2009.

Cross-References

Uniform Probate Code — evidence of death, 72-1-108.

26-1-624. No presumption from tax status of property. In a dispute over the title to the bed of a river or stream, a presumption may not be made based upon whether the department of revenue considers the property to be taxable or nontaxable.

History: En. Sec. 3, Ch. 472, L. 2009.

Part 7
Voluntary Payment of Claims

Part Cross-References

Offers of judgment — not admissible:

Agreements settling or compromising abolished causes of action, 27-1-605.

Liability, Title 27, ch. 1, part 7.

26-1-701. Legislative policy. The legislature declares that the health, welfare, and safety of the people of the state of Montana would be enhanced by the expeditious handling of claims. The legislature further declares that the handling of claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who possesses a claim may not be construed as an admission of fault or liability as to any claim.

History: En. Sec. 1, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-7; amd. Sec. 530, Ch. 56, L. 2009; amd. Sec. 1, Ch. 257, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 257, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 4, Ch. 257, L. 2025, provided: "[This act] applies to liability claims in which a cause of action has accrued on or after October 1, 2025."

26-1-702. Person defined. As used in this part, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

History: En. Sec. 2, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-8.

26-1-703. Voluntary partial payment of claim not an admission of fault or waiver. (1) A voluntary partial payment of a claim against any person based on alleged liability of that person may not be construed as an admission of fault or liability or as a waiver or release of claim by the person to whom or in whose behalf the payment was made. A voluntary partial payment may not be construed to reduce the amount of damages that may be pleaded or proved in any action arising out of the occurrence.

(2) This section does not apply to actions brought under 33-18-201 or 33-18-242.

(3) This section does not apply to proceedings to determine attorney fees relating to breach of contract, including but not limited to proceedings involving:

(a) offers of judgment; or

(b) claims seeking attorney fees from an insurer.

(4) This section does not apply to damages awarded after the entry of a verdict at the discretion of the court, including as provided in 30-14-133, 33-25-402, 70-16-106, 70-16-107, and 70-27-206.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part); amd. Sec. 2, Ch. 257, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 257, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 4, Ch. 257, L. 2025, provided: "[This act] applies to liability claims in which a cause of action has accrued on or after October 1, 2025."

26-1-704. Fact of payment and amount inadmissible as evidence. The fact of any such voluntary payment or its amount shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage, or otherwise.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-705. Effect of payment upon final settlement. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-706. Effect of payment on judgment. After entry of a judgment in an action for damages, any voluntary partial payment made up to that time must be treated as a credit against the judgment and must be deductible from the amount of the judgment. If after partial voluntary payments are made as provided in this section, it must be determined by a court of competent jurisdiction that the person who made the payments or on whose behalf the payments are made is liable for an amount that is less than the amount of the voluntary payments already made, the person may not have a right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part); amd. Sec. 3, Ch. 257, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 257, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 4, Ch. 257, L. 2025, provided: "[This act] applies to liability claims in which a cause of action has accrued on or after October 1, 2025."

Cross-References

Judgment, Title 25, ch. 9.
Execution of judgment, Title 25, ch. 13.
Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.

Part 8
Privileges

Part Cross-References

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.
Public accountants — privilege, 37-50-402.
Reports of child abuse or neglect, 41-3-201.
Examination and treatment of child — abuse or neglect proceedings — reports — attorney-client only privilege, 41-3-204, 41-3-437.
Investigative subpoenas — privileges apply, 46-4-305.
Criminal actions — privilege extends to discovery, 46-15-332.
Deaf — interpreter privilege, 49-4-511.
Admissibility of evidence contained in report under Montana Elder Abuse Prevention Act, 52-3-821.

26-1-801. Policy to protect confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

26-1-802. Spousal privilege. (1) A spouse may not, without the consent of the other spouse, testify during or after the marriage concerning any communication made by one to the other during their marriage.

(2) A judicial, legislative, administrative, or other governmental body may not request or require the disclosure of an electronic communication made by one spouse to the other during their marriage from a spouse or an electronic communication service used by the spouse.

(3) A spouse or an electronic communication service used by the spouse may not be adjudged in contempt by a judicial, legislative, administrative, or other body having the power to issue subpoenas for refusing to disclose or produce electronic communications made by one spouse to the other during their marriage.

(4) The privilege under subsections (1) through (3):

(a) is restricted to communications made during the existence of the marriage relationship and does not extend to communications made prior to the marriage or to communications made after the marriage is dissolved; and

(b) does not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding for a crime committed by one spouse against the other or against a child of either spouse.

(5) For the purposes of this section, "electronic communication" and "electronic communication service" have the meanings provided in 46-5-601. The terms do not include communications transmitted by the state telecommunications network provided for in 2-17-506.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(1); amd. Sec. 1, Ch. 158, L. 2005; amd. Sec. 1, Ch. 446, L. 2023; amd. Sec. 19, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 19, Ch. 53, L. 2025. Amendment effective October 1, 2025.

Cross-References

Marriage, Title 40, ch. 1.
Right of person to sue spouse for intentional tort, 40-2-109.
Child abuse or neglect proceedings — no privilege except attorney-client privilege, 41-3-437.
Sex trafficking — testimony of spouse, 45-5-712.
Crime against spouse or children — no spousal privilege, 46-16-212.

26-1-803. Attorney-client privilege. (1) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or the advice given to the client in the course of professional employment.

(2) A client cannot, except voluntarily, be examined as to any communication made by the client to the client's attorney or the advice given to the client by the attorney in the course of the attorney's professional employment.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(2); amd. Sec. 1, Ch. 276, L. 1989; amd. Sec. 531, Ch. 56, L. 2009.

Cross-References

Supreme Court — authority over conduct of bar, Art. VII, sec. 2, Mont. Const.
Attorneys — generally, Title 37, ch. 61.
Delinquent youth — privilege, 41-5-1303.

26-1-804. Confessions made to member of clergy. A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual's professional character in the course of discipline enjoined by the church to which the individual belongs.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(3); amd. Sec. 532, Ch. 56, L. 2009.**

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist may not, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient that was necessary to enable the physician, surgeon, or dentist to prescribe or act for the patient. A communication described in 45-9-104(7) is not a privileged communication.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(4); amd. Sec. 16, Ch. 72, L. 1983; amd. Sec. 1, Ch. 400, L. 1987; amd. Sec. 533, Ch. 56, L. 2009; amd. Sec. 1, Ch. 194, L. 2011.**

Cross-References

Diagnosis of condition that impairs patient's ability to safely operate motor vehicle — report to Department of Justice — limits on admissibility of report, 37-2-311.

Physicians — generally, Title 37, ch. 3.

Dentists — generally, Title 37, ch. 4.

Artificial insemination — confidential, 40-6-106.

Treatment of minor — disclosure to spouse or parents not violative of privilege, 41-1-403.

Examination and treatment of child — abuse and neglect — no privilege except attorney-client privilege, 41-3-437.

Inhospital medical staff committees — extension of privilege, 50-16-203.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-806. Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist may not, without the consent of the client, be examined in a civil action as to any communication made by the client to the pathologist or audiologist.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(8); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 534, Ch. 56, L. 2009.**

Cross-References

Speech-language pathologists and audiologists, Title 37, ch. 15.

Child abuse and neglect proceedings — no privilege except attorney-client privilege, 41-3-437.

26-1-807. Mental health professional-client privilege. The confidential relations and communications between a psychologist, psychiatrist, licensed professional counselor, or licensed clinical social worker and a client must be placed on the same basis as provided by law for those between an attorney and a client. Nothing in any act of the legislature may be construed to require the privileged communications to be disclosed.

History: **En. Sec. 12, Ch. 73, L. 1971; R.C.M. 1947, 66-3212; amd. Sec. 535, Ch. 56, L. 2009; amd. Sec. 1, Ch. 183, L. 2015.**

Cross-References

Psychologists, Title 37, ch. 17.

Child — abuse and neglect proceedings — no privilege except attorney-client privilege, 41-3-437.

Psychiatric testimony — criminal actions — issue of mental disease or disorder, 46-14-213.

Psychiatric examination for criminal actions — admissibility, 46-14-217.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-808. Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).**

Cross-References

Parent and child, Title 40, ch. 6.

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by an educational institution may not be examined as to communications made to the individual in confidence by a registered student of the institution. However, this provision does not apply when consent has been given by the student, if not a minor, or, if the student is a minor, by the student and the student's parent or legal guardian.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7); amd. Sec. 536, Ch. 56, L. 2009.**

Cross-References

Application of privileges — child abuse, neglect, and dependency, 41-3-204, 41-3-437.
Uniform Health Care Information Act, Title 50, ch. 16, part 5.

26-1-810. Confidential communications made to public officer. A public officer may not be examined as to communications made to the officer in official confidence when the public interests would suffer by the disclosure.

History: **En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5); amd. Sec. 537, Ch. 56, L. 2009.**

Cross-References

Offenses against public administration, Title 45, ch. 7.

26-1-811. Repealed. Sec. 4, Ch. 481, L. 1999.

History: **En. Sec. 1, Ch. 364, L. 1987.**

26-1-812. Advocate privilege. (1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

History: **En. Sec. 8, Ch. 484, L. 1997.**

Cross-References

Assaults, stalking, and related offenses, Title 45, ch. 5, part 2.
Sex crimes, Title 45, ch. 5, part 5.
Victim services, Title 46, ch. 24.

26-1-813. Mediation — confidentiality — privilege — exceptions. (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

(a) confidential;

(b) held without a verbatim record; and

(c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

(a) required by any statute;

(b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or

(c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

History: En. Sec. 1, Ch. 481, L. 1999.

26-1-814. Statement of apology, sympathy, or benevolence — not admissible as evidence of admission of liability for medical malpractice. (1) A statement, affirmation, gesture, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence relating to the pain, suffering, or death of a person that is made to the person, the person's family, or a friend of the person or of the person's family is not admissible for any purpose in a civil action for medical malpractice.

(2) As used in this section, the following definitions apply:

(a) "Apology" means a communication that expresses regret.

(b) "Benevolence" means a communication that conveys a sense of compassion or commiseration emanating from humane impulses.

(c) "Communication" means a statement, writing, or gesture.

(d) "Family" means the spouse, parent, spouse's parent, grandparent, stepmother, stepfather, child, grandchild, sibling, half-sibling, or adopted children of a parent of an injured party.

History: En. Sec. 1, Ch. 42, L. 2005.

Part 9
Media Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Media management to be given opportunity to publish correction prior to action for libel or slander, 27-1-818.

26-1-901. Short title. This part shall be known and may be cited as the "Media Confidentiality Act".

History: **En. Sec. 1, Ch. 195, L. 1943; R.C.M. 1947, 93-601-1; amd. Sec. 1, Ch. 285, L. 1979.**

26-1-902. Extent of privilege — definition. (1) Without a person's consent, a person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news, may not be examined as to or may not be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of the person's employment or business.

(2) A person described in subsection (1) or an electronic communication service used by that person may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of the person's business.

(3) A judicial, legislative, administrative, or other governmental body may not request or require the disclosure of information otherwise protected under subsection (1) from an electronic communication service.

(4) For the purposes of this section, "electronic communication service" means a service used to send, receive, transmit, store, or facilitate electronic communications.

History: **En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(1), (2); amd. Sec. 2, Ch. 285, L. 1979; amd. Sec. 538, Ch. 56, L. 2009; amd. Sec. 1, Ch. 215, L. 2015.**

Cross-References

Contempt of court, Title 3, ch. 1, part 5.

Contempt of Legislature, 5-5-109.

26-1-903. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, the person does not waive the provisions of 26-1-902 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of the person's testimony. Except as provided in this subsection, the provisions of 26-1-902 may not be waived.

History: **En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(3), (4); amd. Sec. 3, Ch. 285, L. 1979; amd. Sec. 1, Ch. 544, L. 1989; amd. Sec. 539, Ch. 56, L. 2009.**

Cross-References

Administrative subpoenas, 2-4-611.

Legislative subpoenas, 5-5-107.

Subpoenas — generally, Title 26, ch. 2, part 1.

Investigative subpoenas, Title 46, ch. 4, part 3.

Part 10
Affidavits

26-1-1001. Affidavit defined. An "affidavit" is a written declaration under oath, made without notice to the adverse party.

History: **En. Sec. 3321, C. Civ. Proc. 1895; re-en. Sec. 7988, Rev. C. 1907; re-en. Sec. 10632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2003; re-en. Sec. 10632, R.C.M. 1935; R.C.M. 1947, 93-1601-2.**

Cross-References

Oaths, Title 1, ch. 6, part 1.

26-1-1002. Permissible uses for affidavits. An affidavit may be used:

(1) to verify a pleading or a paper in a special proceeding;

(2) to prove the service of a summons, notice, or other paper in an action or special proceeding;

(3) to obtain a provisional remedy, the examination of a witness, or a stay of proceedings;

(4) upon a motion; and

(5) in any other case expressly permitted by some other provision of this code.

History: En. Sec. 3330, C. Civ. Proc. 1895; re-en. Sec. 7992, Rev. C. 1907; re-en. Sec. 10636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2009; re-en. Sec. 10636, R.C.M. 1935; R.C.M. 1947, 93-1701-1.

Cross-References

Expected evidence — affidavit supporting, 25-4-501, 25-4-502.

26-1-1003. Affidavits made in this state — before whom taken. An affidavit to be used before any court, judge, or officer of this state may be taken before any judge or clerk of any court or any justice of the peace, county clerk, or notary public in this state.

History: En. Sec. 336, p. 113, Bannack Stat.; re-en. Sec. 399, p. 215, L. 1867; re-en. Sec. 473, p. 130, Cod. Stat. 1871; re-en. Sec. 651, p. 208, L. 1877; re-en. Sec. 651, 1st Div. Rev. Stat. 1879; re-en. Sec. 672, 1st Div. Comp. Stat. 1887; re-en. Sec. 3333, C. Civ. Proc. 1895; re-en. Sec. 7995, Rev. C. 1907; re-en. Sec. 10639, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2012; re-en. Sec. 10639, R.C.M. 1935; R.C.M. 1947, 93-1701-4.

Cross-References

Notaries public — powers and duties, Title 1, ch. 5, part 6.
Supreme Court Justices, District Court Judges, and Justices of the Peace, 3-1-404.
Clerk of District Court, Title 3, ch. 5, part 5.
County Clerk — generally, Title 7, ch. 4, part 26.

26-1-1004. Affidavits made in another state — before whom taken. An affidavit taken in another state of the United States to be used in this state may be taken before a commissioner appointed by the governor of this state to take affidavits and depositions in such other state, before any notary public in another state, or before any judge or clerk of a court of record having a seal.

History: En. Sec. 337, p. 113, Bannack Stat.; amd. Sec. 400, p. 215, L. 1867; amd. Sec. 474, p. 130, Cod. Stat. 1871; re-en. Sec. 652, p. 208, L. 1877; re-en. Sec. 652, 1st Div. Rev. Stat. 1879; re-en. Sec. 673, 1st Div. Comp. Stat. 1887; amd. Sec. 3334, C. Civ. Proc. 1895; re-en. Sec. 7996, Rev. C. 1907; re-en. Sec. 10640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2013; re-en. Sec. 10640, R.C.M. 1935; R.C.M. 1947, 93-1701-5.

Cross-References

Seals, Title 1, ch. 4, part 2.

26-1-1005. Affidavits made in foreign country — before whom taken. An affidavit taken in a foreign country to be used in this state may be taken before an ambassador, minister, consul, vice consul, or consular agent of the United States or before any judge of a court of record having a seal in such foreign country.

History: En. Sec. 338, p. 113, Bannack Stat.; amd. Sec. 401, p. 215, L. 1867; amd. Sec. 475, p. 130, Cod. Stat. 1871; re-en. Sec. 653, p. 208, L. 1877; re-en. Sec. 653, 1st Div. Rev. Stat. 1879; re-en. Sec. 674, 1st Div. Comp. Stat. 1887; amd. Sec. 3335, C. Civ. Proc. 1895; re-en. Sec. 7997, Rev. C. 1907; re-en. Sec. 10641, R.C.M. 1921, Cal. C. Civ. Proc. Sec. 2014; re-en. Sec. 10641, R.C.M. 1935; R.C.M. 1947, 93-1701-6.

Cross-References

Acceptance of foreign seals, 1-4-203.

26-1-1006. Verification of affidavit taken out of state. When an affidavit is taken before a judge of a court in another state or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof must be certified by the clerk of the court, under the seal thereof.

History: En. Sec. 339, p. 113, Bannack Stat.; amd. Sec. 402, p. 215, L. 1867; re-en. Sec. 476, p. 130, Cod. Stat. 1871; re-en. Sec. 654, p. 208, L. 1877; re-en. Sec. 654, 1st Div. Rev. Stat. 1879; re-en. Sec. 675, 1st Div. Comp. Stat. 1887; re-en. Sec. 3336, C. Civ. Proc. 1895; re-en. Sec. 7998, Rev. C. 1907; re-en. Sec. 10642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2015; re-en. Sec. 10642, R.C.M. 1935; R.C.M. 1947, 93-1701-7.

26-1-1007 through 26-1-1010 reserved.

26-1-1011. Affidavit of printer or publisher as evidence of publication. Evidence of the publication of a document or notice required by law or by an order of a court or judge to be published in a newspaper may be given by the affidavit of the printer or publisher of the newspaper or the printer's or publisher's supervisor or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made.

History: En. Sec. 13, p. 12, L. 1881; re-en. Sec. 677, 1st Div. Comp. Stat. 1887; re-en. Sec. 3331, C. Civ. Proc. 1895; re-en. Sec. 7993, Rev. C. 1907; re-en. Sec. 10637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2010; amd. Sec. 1, Ch. 80, L. 1935; re-en. Sec. 10637, R.C.M. 1935; R.C.M. 1947, 93-1701-2; amd. Sec. 540, Ch. 56, L. 2009.

Cross-References

Affidavit of printer — allowance of claims, 18-7-204.
Printers — penalty for false affidavit or overcharge, 18-7-205.

26-1-1012. Affidavit of publication — where filed, prima facie evidence. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

History: En. Sec. 655, p. 209, L. 1877; re-en. Sec. 655, 1st Div. Rev. Stat. 1879; re-en. Sec. 676, 1st Div. Comp. Stat. 1887; re-en. Sec. 3332, C. Civ. Proc. 1895; re-en. Sec. 7994, Rev. C. 1907; re-en. Sec. 10638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2011; re-en. Sec. 10638, R.C.M. 1935; R.C.M. 1947, 93-1701-3.

Cross-References

Clerk of Court — filing, 3-5-501.

Affidavit of printer — allowance of claims, 18-7-204.

26-1-1013. Affidavit of business records. (1) The original or a copy of a business record that meets the requirements of Rule 803(6) of the Montana Rules of Evidence, as shown by a sworn affidavit or certification of the records custodian or other qualified person, is self-authenticating and does not need extrinsic evidence of authenticity in order to be admitted. An affidavit or certification must contain the following information:

(a) a statement showing that the person signing the affidavit or certification is the custodian or is otherwise qualified;

(b) a statement identifying the memorandum, report, record, or data compilation;

(c) a statement showing that the memorandum, report, record, or data compilation was made at or near the time of the acts, events, conditions, opinions, or diagnosis;

(d) a statement showing that the business records were kept in the course of a regularly conducted business activity and that it was the regular practice of that business activity to make the memorandum, report, record, or data compilation; and

(e) a statement indicating whether the documents are the original or are true and correct copies.

(2) A party intending to offer an affidavit or certification pursuant to this section must disclose the evidence to all other parties. The party offering the affidavit or certification must give all other parties written notice at least 21 days before the trial or hearing of the intent to offer the affidavit or certification and must make the business records and affidavit or certification available for inspection so that the other parties have a fair opportunity to challenge the admissibility of the evidence.

History: En. Sec. 1, Ch. 410, L. 2023.

Part 11
Uniform Unsworn Foreign Declarations Act

26-1-1101. Short title. This part may be cited as the "Uniform Unsworn Foreign Declarations Act".

History: En. Sec. 1, Ch. 352, L. 2011.

26-1-1102. Definitions. In this part, the following definitions apply:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

History: **En. Sec. 2, Ch. 352, L. 2011.**

26-1-1103. Applicability. This part applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This part does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

History: **En. Sec. 3, Ch. 352, L. 2011.**

26-1-1104. Validity of unsworn declaration. (1) Except as otherwise provided in subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this part has the same effect as a sworn declaration.

(2) This part does not apply to:

(a) a deposition;

(b) an oath of office;

(c) an oath required to be given before a specified official other than a notary public;

(d) a declaration to be recorded pursuant to Title 70; or

(e) an oath required for a self-proved will under 72-2-524.

History: **En. Sec. 4, Ch. 352, L. 2011.**

26-1-1105. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

History: **En. Sec. 5, Ch. 352, L. 2011.**

26-1-1106. Form of unsworn declaration. An unsworn declaration under this part must be in substantially the following form:

I declare under penalty of perjury under the law of Montana that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the .... (date) day of .... (month), ... (year), at .... (city or other location, and state), ... (country).

.... (printed name)

.... (signature)

History: **En. Sec. 6, Ch. 352, L. 2011.**

26-1-1107. Uniformity of application and construction. In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: **En. Sec. 7, Ch. 352, L. 2011.**

26-1-1108. Relation to Electronic Signatures in Global and National Commerce Act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: **En. Sec. 8, Ch. 352, L. 2011.**

CHAPTER 2
SUBPOENAS AND WITNESSES

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26-2-103. Service of subpoena on concealed witness.
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26-2-501. Witnesses in courts of record and before certain court officers.
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26-2-509. Certificate of clerk to witness to obtain payment.
26-2-510. Application of sections exempting from advance payment.
26-2-511 through 26-2-514 reserved.
26-2-515. State employees — compensation for time spent answering subpoena.

Part 6 — Expert Witness Qualifications — Medical Malpractice

26-2-601. Medical malpractice expert witness qualifications.

Part 1
Subpoenas

Part Cross-References

Administrative proceedings subpoenas, 2-4-611.
Legislative subpoenas, 5-5-107.
Securities regulation — subpoenas, 30-10-304.
Investigative subpoenas, Title 46, ch. 4, part 3.
Grand jury — subpoenas, 46-11-313.
Criminal subpoenas, Title 46, ch. 15, part 1.
Inability to procure witness through subpoena — use of criminal depositions, 46-15-201, 46-15-202, 46-15-204.

26-2-101. Subpoena defined. The process by which the attendance of a witness is required is by a subpoena. A subpoena is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. The subpoena may also require the person to bring with the person any books, documents, or other things under the person's control that the person is bound by law to produce in evidence.

History: En. Sec. 380, p. 212, L. 1867; re-en. Sec. 454, p. 127, Cod. Stat. 1871; re-en. Sec. 633, p. 204, L. 1877; re-en. Sec. 633, 1st Div. Rev. Stat. 1879; re-en. Sec. 654, 1st Div. Comp. Stat. 1887; en. Sec. 3300, C. Civ. Proc. 1895; re-en. Sec. 7974, Rev. C. 1907; re-en. Sec. 10618, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1985; re-en. Sec. 10618, R.C.M. 1935; R.C.M. 1947, 93-1501-3; amd. Sec. 541, Ch. 56, L. 2009.

Cross-References

Criminal subpoenas, Title 46, ch. 15, part 1.

26-2-102. Issuance of subpoena. The subpoena is issued as follows:

(1) To require attendance before a court or at the trial of an issue in a court, it is issued under the seal of the court before which the attendance is required or in which the issue is pending.

(2) To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is issued by the judge, justice, or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, of the United States, of any other state in the United States, or of any other district or county within this state or before any officer empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within the judge's or justice's respective jurisdiction, with the same power to enforce attendance and, upon certificate of contumacy to the court, to punish contempt of process that the judge or justice could exercise if the subpoena directed the attendance of the witness before the judge's or justice's court in a matter pending in that court.

History: En. Sec. 322, p. 111, Bannack Stat.; en. Sec. 381, p. 212, L. 1867; re-en. Sec. 455, p. 127, Cod. Stat. 1871; re-en. Sec. 634, p. 204, L. 1877; re-en. Sec. 634, 1st Div. Rev. Stat. 1879; re-en. Sec. 655, 1st Div. Comp. Stat. 1887; re-en. Sec. 3301, C. Civ. Proc. 1895; re-en. Sec. 7975, Rev. C. 1907; re-en. Sec. 10619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1986; re-en. Sec. 10619, R.C.M. 1935; R.C.M. 1947, 93-1501-4; amd. Sec. 542, Ch. 56, L. 2009.

Cross-References

Powers of officer taking proof of execution of instrument, 1-5-304.
Administrative proceedings, 2-4-104, 2-4-611.
Procedure for certifying contempt of legislature, 5-5-113.
Legislative committee powers relating to hearings, 5-11-107.
Criminal contempt of legislature, 45-7-313.
Grand jury — subpoena of witness, 46-11-313.
Criminal subpoena — issuance, 46-15-101.
Witnesses from another state — criminal actions, 46-15-113.
Board of Pardons and Parole — issuance and service of subpoenas, 46-23-205.

26-2-103. Service of subpoena on concealed witness. If a witness is concealed in a building or vessel so as to prevent the service of a subpoena upon the witness, any court, judge, or any officer issuing a subpoena may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena, and the sheriff shall serve it accordingly and, for that purpose, may break into the building or vessel where the witness is concealed.

History: En. Sec. 383, p. 212, L. 1867; re-en. Sec. 457, p. 127, Cod. Stat. 1871; re-en. Sec. 636, p. 205, L. 1877; re-en. Sec. 636, 1st Div. Rev. Stat. 1879; re-en. Sec. 657, 1st Div. Comp. Stat. 1887; re-en. Sec. 3303, C. Civ. Proc. 1895; re-en. Sec. 7977, Rev. C. 1907; re-en. Sec. 10621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1988; re-en. Sec. 10621, R.C.M. 1935; R.C.M. 1947, 93-1501-6; amd. Sec. 543, Ch. 56, L. 2009.

Cross-References

Contempt of court, Title 3, ch. 1, part 5.
Service of criminal subpoenas, 46-15-107.

26-2-104. Disobedience — how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be sworn, to answer, or to subscribe. If the witness is a party, the party's complaint or answer may be stricken out.

History: En. Sec. 329, p. 112, Bannack Stat.; amd. Sec. 387, p. 213, L. 1867; re-en. Sec. 461, p. 128, Cod. Stat. 1871; re-en. Sec. 640, p. 206, L. 1877; re-en. Sec. 640, 1st Div. Rev. Stat. 1879; re-en. Sec. 661, 1st Div. Comp. Stat. 1887; re-en. Sec. 3306, C. Civ. Proc. 1895; re-en. Sec. 7980, Rev. C. 1907; re-en. Sec. 10624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1991; re-en. Sec. 10624, R.C.M. 1935; R.C.M. 1947, 93-1501-9; amd. Sec. 17, Ch. 72, L. 1983; amd. Sec. 544, Ch. 56, L. 2009.

Cross-References

Contempt of court, Title 3, ch. 7, part 5.
Legislative contempt, 5-5-109.
Board of Pardons and Parole subpoena — penalty for disobedience, 46-23-207.

26-2-105. Disobedience — civil damages. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of $100 and all damages that the person may sustain by the failure of the witness to attend. The forfeiture and damages may be recovered in a civil action.

History: En. Sec. 330, p. 112, Bannack Stat.; re-en. Sec. 388, p. 213, L. 1867; re-en. Sec. 462, p. 128, Cod. Stat. 1871; re-en. Sec. 641, p. 206, L. 1877; re-en. Sec. 641, 1st Div. Rev. Stat. 1879; re-en. Sec. 662, 1st Div. Comp. Stat. 1887; re-en. Sec. 3307, C. Civ. Proc. 1895; re-en. Sec. 7981, Rev. C. 1907; re-en. Sec. 10625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1992; re-en. Sec. 10625, R.C.M. 1935; R.C.M. 1947, 93-1501-10; amd. Sec. 545, Ch. 56, L. 2009.

Cross-References
Measure of damages for misconduct, 3-1-521.

26-2-106. Warrant to arrest and bring in disobedient witness. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court or officer where attendance was required.

History: En. Sec. 331, p. 112, Bannack Stat.; amd. Sec. 389, p. 213, L. 1867; re-en. Sec. 463, p. 128, Cod. Stat. 1871; re-en. Sec. 642, p. 207, L. 1877; re-en. Sec. 642, 1st Div. Rev. Stat. 1879; re-en. Sec. 663, 1st Div. Comp. Stat. 1887; re-en. Sec. 3308, C. Civ. Proc. 1895; re-en. Sec. 7982, Rev. C. 1907; re-en. Sec. 10626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1993; re-en. Sec. 10626, R.C.M. 1935; R.C.M. 1947, 93-1501-11; amd. Sec. 546, Ch. 56, L. 2009.

Cross-References
Detention, Art. II, sec. 23, Mont. Const.
Contempt — warrant of attachment or commitment, 3-1-513.
Contempt — arrest and detention by Sheriff, 3-1-515, 3-1-521.
Legislature — compelling attendance, 5-5-111.

26-2-107. Contents of warrant — execution. Each warrant of commitment issued by a court or officer pursuant to this part must specify, particularly, the cause of the commitment. If the warrant is issued for refusing to answer a question, the question must be stated in the warrant. Each warrant to arrest or commit a witness pursuant to this part must be directed to the sheriff of the county where the witness may be and must be executed by the sheriff in the same manner as process by the district court.

History: En. Sec. 643, p. 207, L. 1877; re-en. Sec. 643, 1st Div. Rev. Stat. 1879; re-en. Sec. 664, 1st Div. Comp. Stat. 1887; re-en. Sec. 3309, C. Civ. Proc. 1895; re-en. Sec. 7983, Rev. C. 1907; re-en. Sec. 10627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1994; re-en. Sec. 10627, R.C.M. 1935; R.C.M. 1947, 93-1501-12; amd. Sec. 547, Ch. 56, L. 2009.

Cross-References
Execution of process in District Court, Title 25, ch. 3.

26-2-108 through 26-2-110 reserved.

26-2-111. Time during which subpoena is effective. A subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by the court in which the action was filed or to which the action was transferred.

History: En. Sec. 1, Ch. 138, L. 1995.

Cross-References
Criminal subpoenas, 46-15-101.

Part 2
Securing Testimony of Witness Who Is a Prisoner

Part Cross-References
Criminal subpoena — persons imprisoned in state prison or in another county, 46-15-105.

26-2-201. Court order to obtain deposition or attendance of prisoner. If the witness is a prisoner confined in a jail or prison within this state, an order for the witness's examination in the jail or prison upon deposition or for the witness's temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

(1) by the court itself in which the action or special proceeding is pending unless it is a justice's court;

(2) by a justice of the supreme court or a judge of the district court of the county where the action or proceeding is pending if pending before a justice's court or before a judge or other person out of court.

History: En. Sec. 332, p. 112, Bannack Stat.; re-en. Sec. 390, p. 213, L. 1867; re-en. Sec. 464, p. 128, Cod. Stat. 1871; re-en. Sec. 644, p. 207, L. 1877; re-en. Sec. 644, 1st Div. Rev. Stat. 1879; re-en. Sec. 665, 1st Div. Comp. Stat. 1887; amd. Sec. 3310, C. Civ. Proc. 1895; re-en. Sec. 7984, Rev. C. 1907; re-en. Sec. 10628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1995; re-en. Sec. 10628, R.C.M. 1935; R.C.M. 1947, 93-1501-13; amd. Sec. 548, Ch. 56, L. 2009.

Cross-References
Detention, Art. II, sec. 23, Mont. Const.
Depositions — criminal proceedings, Title 46, ch. 15, part 2.

26-2-202. Motion and affidavit required. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

History: En. Sec. 333, p. 113, Bannack Stat.; re-en. Sec. 391, p. 213, L. 1867; re-en. Sec. 465, p. 128, Cod. Stat. 1871; re-en. Sec. 645, p. 207, L. 1877; re-en. Sec. 645, 1st Div. Rev. Stat. 1879; re-en. Sec. 666, 1st Div. Comp. Stat. 1887; re-en. Sec. 3311, C. Civ. Proc. 1895; re-en. Sec. 7985, Rev. C. 1907; re-en. Sec. 10629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1996; re-en. Sec. 10629, R.C.M. 1935; R.C.M. 1947, 93-1501-14.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

26-2-203. When production of witness may be required. If the witness is imprisoned in the county where the action or proceeding is pending, the witness's production may be required. In all other cases, the witness's examination, when allowed, must be taken upon deposition.

History: En. Sec. 334, p. 113, Bannack Stat.; re-en. Sec. 392, p. 213, L. 1867; re-en. Sec. 466, p. 129, Cod. Stat. 1871; re-en. Sec. 646, p. 207, L. 1877; re-en. Sec. 646, 1st Div. Rev. Stat. 1879; re-en. Sec. 667, 1st Div. Comp. Stat. 1887; re-en. Sec. 3312, C. Civ. Proc. 1895; re-en. Sec. 7986, Rev. C. 1907; re-en. Sec. 10630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1997; re-en. Sec. 10630, R.C.M. 1935; R.C.M. 1947, 93-1501-15; amd. Sec. 549, Ch. 56, L. 2009.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.
Depositions — criminal, Title 46, ch. 15, part 2.

Part 3
Duties of Witnesses

Part Cross-References

Tampering with witnesses, 45-7-206.
Criminal actions — ensuring availability of material witness — preserving testimony, 46-11-601.

26-2-301. Witness required to attend when subpoenaed. A witness served with a subpoena shall attend at the time appointed, with any papers under the witness's control required by the subpoena, and answer all pertinent and legal questions and, unless sooner discharged, shall remain until the testimony is closed.

History: En. Sec. 327, p. 112, Bannack Stat.; re-en. Sec. 385, p. 213, L. 1867; re-en. Sec. 459, p. 128, Cod. Stat. 1871; re-en. Sec. 638, p. 206, L. 1877; re-en. Sec. 638, 1st Div. Rev. Stat. 1879; re-en. Sec. 659, 1st Div. Comp. Stat. 1887; amd. Sec. 3400, C. Civ. Proc. 1895; re-en. Sec. 8029, Rev. C. 1907; re-en. Sec. 10673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2064; re-en. Sec. 10673, R.C.M. 1935; R.C.M. 1947, 93-2101-1; amd. Sec. 550, Ch. 56, L. 2009.

26-2-302. Witness required to answer questions. A witness shall answer questions legal and pertinent to the matter in issue though the answer may establish a claim against the witness. However, the witness is not required to give an answer that will have a tendency to subject the witness to punishment for a felony or to give an answer that will have a direct tendency to degrade the witness's character unless the answer is to the very fact in issue or to a fact from which the fact in issue would be presumed.

History: En. Sec. 328, p. 112, Bannack Stat.; re-en. Sec. 386, p. 213, L. 1867; re-en. Sec. 460, p. 128, Cod. Stat. 1871; re-en. Sec. 639, p. 206, L. 1877; re-en. Sec. 639, 1st Div. Rev. Stat. 1879; re-en. Sec. 660, 1st Div. Comp. Stat. 1887; amd. Sec. 3401, C. Civ. Proc. 1895; re-en. Sec. 8030, Rev. C. 1907; re-en. Sec. 10674, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2065; re-en. Sec. 10674, R.C.M 1935; R.C.M. 1947, 93-2101-2; amd. Sec. 18, Ch. 72, L. 1983; amd. Sec. 551, Ch. 56, L. 2009.

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.
Refusal to testify — contempt:
Administrative proceedings, 2-4-104.
Defined as contemptuous, 3-1-501.
Justices' Courts, 3-10-401.
City Courts, 3-11-303.
Before Legislature, 5-5-109.
Procedure for certifying contempt of legislature, 5-5-113.
Legislative committee powers relating to hearings, 5-11-107.
Criminal contempt, 45-7-309.
Criminal contempt of legislature, 45-7-313.
Civil execution of judgment — location of property — answer required, 25-14-101.
Compelling testimony of witness — immunity:
Securities regulation, 30-10-304, 30-14-221.

Investigative subpoenas, 46-4-305.
Judicial proceedings, 46-15-331.
Perjury, 45-7-201.
False swearing, 45-7-202.

26-2-303. Person present required to testify. A person present in court or before a judicial officer may be required to testify in the same manner as if the person were in attendance upon a subpoena issued by the court or officer.

History: En. Sec. 326, p. 112, Bannack Stat.; re-en. Sec. 384, p. 212, L. 1867; re-en. Sec. 458, p. 128, Cod. Stat. 1871; re-en. Sec. 637, p. 206, L. 1877; re-en. Sec. 637, 1st Div. Rev. Stat. 1879; re-en. Sec. 658, 1st Div. Comp. Stat. 1887; re-en. Sec. 3305, C. Civ. Proc. 1895; re-en. Sec. 7979, Rev. C. 1907; re-en. Sec. 10623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1990; re-en. Sec. 10623, R.C.M. 1935; R.C.M. 1947, 93-1501-8; amd. Sec. 552, Ch. 56, L. 2009.

Part 4
Protection of Witnesses

26-2-401. Right of witness to protection from harassment. It is the right of a witness to be protected from irrelevant, improper, or insulting questions and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

History: En. Sec. 3402, C. Civ. Proc. 1895; re-en. Sec. 8031, Rev. C. 1907; re-en. Sec. 10675, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2066; re-en. Sec. 10675, R.C.M. 1935; R.C.M. 1947, 93-2101-3.

Cross-References
Detaining witnesses — criminal — material witness, 46-11-601.
Compelling testimony of witness — criminal, 46-15-331.

26-2-402. Witness protected from arrest when attending, going, and returning. Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person in a case where the disobedience of the witness may be punished as a contempt is exonerated from arrests in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

History: En. Sec. 335, p. 113, Bannack Stat.; amd. Sec. 393, p. 213, L. 1867; re-en. Sec. 467, p. 129, Cod. Stat. 1871; re-en. Sec. 674, p. 215, L. 1877; re-en. Sec. 3403, C. Civ. Proc. 1895; re-en. Sec. 8032, Rev. C. 1907; re-en. Sec. 10676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2067; re-en. Sec. 10676, R.C.M. 1935; R.C.M. 1947, 93-2101-4.

Cross-References
Persons exempt from arrest, 46-6-102.
Criminal subpoena — exemption from arrest — person from out of state, 46-15-120.

26-2-403. Arrest void — punishment and liability. The arrest of a witness contrary to 26-2-402 is void and, when willfully made, is a contempt of the court. The person making the arrest is responsible to the witness arrested for double the amount of the damages that may be assessed against the person and is also liable to an action at the suit of the party serving the witness with a subpoena for the damages sustained by the party serving the witness in consequence of the arrest.

History: En. Sec. 3404, C. Civ. Proc. 1895; re-en. Sec. 8033, Rev. C. 1907; re-en. Sec. 10677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2068; re-en. Sec. 10677, R.C.M. 1935; R.C.M. 1947, 93-2101-5; amd. Sec. 553, Ch. 56, L. 2009.

Cross-References
Contempt of court, Title 3, ch. 1, part 5.
Measure of damages, Title 27, ch. 1, part 3.
Liability, Title 27, ch. 1, part 7.

26-2-404. Affidavit of arrested witness — exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the witness if the witness claims the exemption and makes an affidavit stating that the witness:

(a) has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the court, officer, or person, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) has not thus been served by the witness's own procurement with the intention of avoiding arrest; and

(c) is at the time going to the place of attendance, returning from the place of attendance, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates the officer from liability for discharging the witness when arrested.

History: En. Sec. 394, p. 214, L. 1867; re-en. Sec. 468, p. 129, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 3405, C. Civ. Proc. 1895; re-en. Sec. 8034, Rev. C. 1907; re-en. Sec. 10678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2069; re-en. Sec. 10678, R.C.M. 1935; R.C.M. 1947, 93-2101-6; amd. Sec. 19, Ch. 72, L. 1983; amd. Sec. 554, Ch. 56, L. 2009.

Cross-References

Affidavits, Title 26, ch. 1, part 10.
Subpoenas, Title 26, ch. 2, part 1.
Unlawful restraint, 45-5-301.
Arrest by peace officer, 46-6-210.

26-2-405. Discharge of witness from arrest by court or judge. The court or officer issuing the subpoena and the court or officer before whom the attendance is required may discharge the witness from an arrest made in violation of 26-2-402. If the court has adjourned before the arrest or before application for discharge, a judge of the court may grant the discharge.

History: En. Sec. 3406, C. Civ. Proc. 1895; re-en. Sec. 8035, Rev. C. 1907; re-en. Sec. 10679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2070; re-en. Sec. 10679, R.C.M. 1935; R.C.M. 1947, 93-2101-7.

Cross-References

Subpoenas, Title 26, ch. 2, part 1.

Part 5
Witness Fees

26-2-501. Witnesses in courts of record and before certain court officers. (1) Except as provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, $10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, an officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana may not receive any per diem when testifying in a criminal proceeding, and a witness may not receive fees in more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; re-en. Sec. 4936, R.C.M. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971; amd. Sec. 11, Ch. 439, L. 1975; R.C.M. 1947, 25-404; amd. Sec. 23, Ch. 449, L. 2005.

Cross-References

Costs generally allowable, 25-10-201.
Costs of securing witnesses, 25-10-205.
Expenses of grand jury, 46-11-319.

26-2-502. Witnesses in courts not of record — civil actions. Witnesses in courts not of record in civil actions and proceedings shall receive $10 for each day's actual attendance and mileage as provided in 2-18-503 for each mile actually traveled in going from their residences by the usual traveled route to the court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; re-en. Sec. 4941, R.C.M. 1935; amd. Sec. 4, Ch. 332, L. 1971; amd. Sec. 7, Ch. 420, L. 1975; R.C.M. 1947, 25-409; amd. Sec. 2, Ch. 334, L. 1985.

Cross-References

Courts of record, 3-1-102.

26-2-503. Witnesses in courts not of record — criminal actions and on coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive $10 per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; re-en. Sec. 4942, R.C.M. 1935; amd. Sec. 5, Ch. 332, L. 1971; amd. Sec. 8, Ch. 420, L. 1975; R.C.M. 1947, 25-410; amd. Sec. 3, Ch. 334, L. 1985.

Cross-References

Courts of record, 3-1-102.
Payment of costs of inquest, 7-4-2913.
Coroner's inquests, Title 46, ch. 4, part 2.

26-2-504. Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907; re-en. Sec. 4946, R.C.M. 1921; re-en. Sec. 4946, R.C.M. 1935; R.C.M. 1947, 25-413.

Cross-References

English language — judicial proceedings, 3-1-314.
Interpreters for the deaf — compensation, 49-4-509.

26-2-505. Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907; re-en. Sec. 4947, R.C.M. 1921; re-en. Sec. 4947, R.C.M. 1935; R.C.M. 1947, 25-414.

26-2-506. Fees paid by party subpoenaing — exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in 47-1-119.

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the county except as provided in subsection (2)(c).

(c) The attorney general shall reimburse a county for fees and compensation of an expert witness up to the amount appropriated for expert witness expenses, except for cases in which the death penalty is being sought by the prosecution. The attorney general shall adopt rules to provide for reimbursement procedures, including setting priorities for expenses and balancing between the needs of rural and urban counties.

(d) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907; re-en. Sec. 4943, R.C.M. 1921; re-en. Sec. 4943, R.C.M. 1935; R.C.M. 1947, 25-411; amd. Sec. 24, Ch. 449, L. 2005; amd. Sec. 9, Ch. 358, L. 2017; amd. Sec. 1, Ch. 205, L. 2019; amd. Sec. 1, Ch. 664, L. 2023.

Cross-References

Witness fees — allowable cost, 25-10-201.

26-2-507. Demand for advance payment of witness fees in civil action. A witness is not obliged to attend court or appear before a referee, officer authorized to take depositions, or commissioner, when subpoenaed, unless the witness's mileage and fees for 1 day's attendance are tendered or paid to the witness on demand or unless the fees for attendance for each succeeding day are tendered or paid to the witness on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907; re-en. Sec. 4944, R.C.M. 1921; amd. Sec. 1, Ch. 71, L. 1927; re-en. Sec. 4944, R.C.M. 1935; R.C.M. 1947, 25-412; amd. Sec. 555, Ch. 56, L. 2009.

Cross-References

Witness fees — allowable cost, 25-10-201.

26-2-508. Witnesses for state, county, or public defender — advance payment not required. The attorney general, any county attorney, or any public defender, as defined in 47-1-103, is authorized to cause subpoenas to be issued and compel the attendance of witnesses without paying or tendering fees in advance to either officers or witnesses. A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4902, R.C.M. 1921; re-en. Sec. 4902, R.C.M. 1935; R.C.M. 1947, 25-218; amd. Sec. 25, Ch. 449, L. 2005.

Cross-References

Failure of witness to attend, 26-2-104 through 26-2-107.

26-2-509. Certificate of clerk to witness to obtain payment. The clerk of any court before which a witness has attended on behalf of the state or county in a civil action shall give to the witness a certificate under seal of travel and attendance that entitles the witness to receive the amount stated in the certificate from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907; re-en. Sec. 4903, R.C.M. 1921; re-en. Sec. 4903, R.C.M. 1935; R.C.M. 1947, 25-219; amd. Sec. 556, Ch. 56, L. 2009.

Cross-References

Clerk of Court — duties relating to witnesses, 3-5-510 through 3-5-512.

26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 extend to all actions and proceedings brought in the name of the attorney general, any other person or persons for the benefit of the state or county, or any other person or persons for the benefit of a public defender, as defined in 47-1-103.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907; re-en. Sec. 4904, R.C.M. 1921; re-en. Sec. 4904, R.C.M. 1935; R.C.M. 1947, 25-220; amd. Sec. 26, Ch. 449, L. 2005.

Cross-References

Duties of Attorney General, 2-18-501.

26-2-511 through 26-2-514 reserved.

26-2-515. State employees — compensation for time spent answering subpoena. An employee of the state must receive all regular pay and benefits for time spent answering a subpoena when called to testify in connection with the employee's official duties in a civil action in which the state or one of its agencies is not a party. The person requesting issuance of the subpoena shall, if requested by the affected state agency, reimburse the agency for the compensation, including regular pay and benefits, paid to the employee for time spent answering the subpoena. As used in this section, "employee" means an employee of the executive, legislative, or judicial branch of state government.

History: En. Sec. 1, Ch. 450, L. 1995.

Cross-References

State employee classification and pay, Title 2, ch. 18.

Part 6
Expert Witness Qualifications — Medical Malpractice

26-2-601. Medical malpractice expert witness qualifications. (1) A person may not testify as an expert witness on issues relating to negligence and standards of care and practice in an action on a malpractice claim, as defined in 27-6-103, for or against a health care provider, as defined in 27-6-103, unless the person:

(a) is licensed as a health care provider in at least one state and routinely treats or has routinely treated within the previous 5 years the diagnosis or condition or provides the type of treatment that is the subject matter of the malpractice claim or is or was within the previous 5 years an instructor of students in an accredited health professional school or accredited residency or clinical research program relating to the diagnosis or condition or the type of treatment that is the subject matter of the malpractice claim; and

(b) shows by competent evidence that, as a result of education, training, knowledge, and experience in the evaluation, diagnosis, or treatment of the disease or injury that is the subject matter of the malpractice claim against the health care provider, the person is thoroughly familiar with the standards of care and practice as they related to the act or omission that is the subject matter of the malpractice claim on the date of the incident upon which the malpractice claim is based.

(2) If the malpractice claim involves treatment that is recommended or provided by a physician as defined in 37-3-102, a person may not testify as an expert witness with respect to issues of negligence or standards of care and practice concerning the treatment unless the person is also a physician.

(3) A person qualified as an expert in one medical specialty or subspecialty is not qualified to testify with respect to a malpractice claim against a health care provider in another medical specialty or subspecialty unless there is a showing that the standards of care and practice in the

two specialty or subspecialty fields are substantially similar. This subsection (3) does not apply if the subject matter of the malpractice claim against the health care provider is unrelated to the relevant specialty or subspecialty.

History: **En. Sec. 1, Ch. 49, L. 2005.**

CHAPTER 3
EFFECT OF FORMER JUDGMENTS AND ORDERS

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26-3-101. Kinds of jurisdiction necessary to sustain a record.
26-3-102. What considered adjudged in a judgment.
26-3-103. When parties are considered to be the same.
26-3-104. Principal bound when surety bound.
26-3-105. Impeachment of a judicial record.

Part 2 — Effect of Specific Kinds of Judicial Records

26-3-201. Effect of judgment or final order — when conclusive.
26-3-202. Effect of other judicial orders — when disputable presumption created.
26-3-203. Effect of judicial record of another state.
26-3-204. Effect of judicial record of foreign court of admiralty.
26-3-205. Effect of judgments of other foreign tribunals.

Chapter Cross-References

Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.
Judgments — generally, Title 25, ch. 9.
Effect of former criminal prosecutions, Title 46, ch. 11, part 5.

Part 1
General Provisions

26-3-101. Kinds of jurisdiction necessary to sustain a record. The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

History: **En. Sec. 3205, C. Civ. Proc. 1895; re-en. Sec. 7923, Rev. C. 1907; re-en. Sec. 10567, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1917; re-en. Sec. 10567, R.C.M. 1935; R.C.M. 1947, 93-1001-29.**

Cross-References

Sovereignty and jurisdiction of state, Title 2, ch. 1, part 1.
Territorial limits on jurisdiction, Title 2, ch. 1, part 2.
Jurisdiction:
Supreme Court, Title 3, ch. 2, part 2.
District Court, 3-5-302.
Municipal Court, 3-6-103.
Water Court, 3-7-502.
Justice's Court, 3-10-303.
City Courts, 3-11-102, 3-11-103.

26-3-102. What considered adjudged in a judgment. That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged or which was actually and necessarily included therein or necessary thereto.

History: **En. Sec. 3199, C. Civ. Proc. 1895; re-en. Sec. 7917, Rev. C. 1907; re-en. Sec. 10561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1911; re-en. Sec. 10561, R.C.M. 1935; R.C.M. 1947, 93-1001-23.**

Cross-References

Apparent nonexistence, 1-3-221.
Contents of judgment, Title 25, ch. 9, part 2.

26-3-103. When parties are considered to be the same. The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

History: **En. Sec. 3198, C. Civ. Proc. 1895; re-en. Sec. 7916, Rev. C. 1907; re-en. Sec. 10560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1910; re-en. Sec. 10560, R.C.M. 1935; R.C.M. 1947, 93-1001-22.**

Cross-References

Parties, Title 25, ch. 5.

26-3-104. Principal bound when surety bound. Whenever, pursuant to 26-3-102, 26-3-103, 26-3-201, and 26-3-202, a party is bound by a record and the party stands in the relation of a surety for another, the other person is also bound from the time that the person has notice of the action or proceeding and an opportunity at the surety's request to join in the defense.

History: En. Sec. 3200, C. Civ. Proc. 1895; re-en. Sec. 7918, Rev. C. 1907; re-en. Sec. 10562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1912; re-en. Sec. 10562, R.C.M. 1935; R.C.M. 1947, 93-1001-24; amd. Sec. 557, Ch. 56, L. 2009.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

26-3-105. Impeachment of a judicial record. Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record in respect to the proceedings.

History: En. Sec. 3204, C. Civ. Proc. 1895; re-en. Sec. 7922, Rev. C. 1907; re-en. Sec. 10566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1916; re-en. Sec. 10566, R.C.M. 1935; R.C.M. 1947, 93-1001-28.

Cross-References

Conclusive presumptions — conclusive judgment or order of court, 26-1-601.
Disputable presumption — judicial records, 26-1-602.
Fraud, 28-2-404 through 28-2-406.

Part 2

Effect of Specific Kinds of Judicial Records

Part Cross-References

Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.
Civil injury not merged into criminal offense — separate actions, 45-1-104.

26-3-201. Effect of judgment or final order — when conclusive. The effect of a judgment or final order in an action or special proceeding before a court or judge of this state or of the United States having jurisdiction to pronounce the judgment or order is as follows:

(1) In case of a judgment or order against a specific thing, or in respect to the probate of a will or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

History: En. Sec. 3196, C. Civ. Proc. 1895; re-en. Sec. 7914, Rev. C. 1907; re-en. Sec. 10558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1908; re-en. Sec. 10558, R.C.M. 1935; R.C.M. 1947, 93-1001-20.

Cross-References

Judgment, Title 25, ch. 9.
Conclusive presumption — conclusive judgment or order, 26-1-601.
Wills and estates, Title 72.

26-3-202. Effect of other judicial orders — when disputable presumption created. Other judicial orders of a court or judge of this state or of the United States create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

History: En. Sec. 3197, C. Civ. Proc. 1895; re-en. Sec. 7915, Rev. C. 1907; re-en. Sec. 10559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1909; re-en. Sec. 10559, R.C.M. 1935; R.C.M. 1947, 93-1001-21.

Cross-References

Disputable presumptions, 26-1-602.

26-3-203. Effect of judicial record of another state. The effect of a judicial record of another state is the same in this state as in the state where it was made, except that it may be enforced in this state only by an action or special proceeding. However, the authority of a guardian, committee, executor, or administrator does not extend beyond the jurisdiction of the government under which the guardian, committee, executor, or administrator was invested with authority.

History: En. Sec. 3201, C. Civ. Proc. 1895; re-en. Sec. 7919, Rev. C. 1907; re-en. Sec. 10563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1913; re-en. Sec. 10563, R.C.M. 1935; R.C.M. 1947, 93-1001-25; amd. Sec. 558, Ch. 56, L. 2009.

Cross-References

Personal representatives — foreign — jurisdiction, 72-3-506.

Guardianship of minor — foreign testamentary appointment, 72-5-212.

26-3-204. Effect of judicial record of foreign court of admiralty. The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

History: En. Sec. 3202, C. Civ. Proc. 1895; re-en. Sec. 7920, Rev. C. 1907; re-en. Sec. 10564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1914; re-en. Sec. 10564, R.C.M. 1935; R.C.M. 1947, 93-1001-26.

26-3-205. Effect of judgments of other foreign tribunals. The effect of the judgment of any other tribunal of a foreign country having jurisdiction to pronounce the judgment is as follows:

(1) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing.

(2) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

History: En. Sec. 3203, C. Civ. Proc. 1895; re-en. Sec. 7921, Rev. C. 1907; re-en. Sec. 10565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1915; re-en. Sec. 10565, R.C.M. 1935; R.C.M. 1947, 93-1001-27.

Cross-References

Conclusive presumptions — conclusive judgment or order, 26-1-601.

Disputable presumptions — nonconclusive judicial record, 26-1-602.

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CHAPTER 10
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Chapter Compiler's Comments

Publication of Rules: These rules are published in the Montana Code Annotated. However, the supreme court order adopting the rules contains the official rules, and the supreme court is responsible for the content, editing, and format of the rules.

Article I
General Provisions

Rule 100. Short title.

These rules may be known and cited as the Montana Rules of Evidence.

Rule 101. Scope.

(a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule.

(b) Rules of privilege. The rules with respect to privileges found in Article V apply at all stages of all actions, cases and proceedings.

(c) Rules inapplicable. The rules (other than those with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations and proceedings on applications for leave to file informations in criminal cases; sentencing; dispositional hearings in youth court proceedings; granting or revoking probation or parole; issuance of warrants for arrest, criminal summonses and notices to appear, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Summary proceedings. Proceedings, other than motions for summary judgment, where the court is authorized by law to act summarily.

(5) Other miscellaneous proceedings. Ex parte matters; and proceedings, when authorized by law, which are uncontested or nonadversary.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 102. Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 103. Rulings on evidence.

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of the jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 104. Preliminary questions of admissibility.

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Admissibility subject to a condition. Except as otherwise provided by law, when the admissibility of evidence depends upon proof of other connecting facts, the court may admit such evidence subject to the condition that further evidence be introduced sufficient to support a finding of those connecting facts. The order of proof may be regulated by the sound discretion of the court.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 105. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 106. Remainder of or related acts, writings, or statements.

(a) When part of an act, declaration, conversation, writing or recorded statement or series thereof is introduced by a party:

(1) an adverse party may require the introduction at that time of any other part of such item or series thereof which ought in fairness to be considered at that time; or

(2) an adverse party may inquire into or introduce any other part of such item of evidence or series thereof.

(b) This rule does not limit the right of any party to cross-examine or further develop as part of the case matters covered by this rule.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Article II
Judicial Notice

Rule 201. Judicial notice of facts.

(a) Scope of rule. This rule governs judicial notice of all facts.

(b) Kinds of facts. A fact to be judicially noticed must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing the jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 202. Judicial notice of law.

(a) Scope of rule. This rule governs judicial notice of law.

(b) Kinds of law. Law includes but is not limited to the following:

(1) The common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States;

(2) Duly enacted ordinances and regulations of governmental divisions of this state, including their charters;

(3) Regulations and legislative enactments issued by or under authority of the United States and of this and any state of the United States by or for their agencies or administrations;

(4) Official acts of the legislative, executive, and judicial departments of the United States and of this and any state of the United States;

(5) Private acts and resolutions of the Congress of the United States and of the legislature of this state;

(6) Records of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(7) Rules of practice and procedure of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(8) The law of foreign nations;

(9) International law;

(10) Maritime law;

(11) The seals of office of the officers of government in the legislative, executive, and judicial departments of government of the United States and of this and every other state, territory and jurisdiction of the United States, of any foreign jurisdiction recognized by the executive power of the United States, and of notaries public.

(c) When discretionary. A court may take judicial notice of the law listed in parts 2-10 of Rule 202(b) or other law, whether requested or not. The court may inform itself of any law in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.

(d) When mandatory. A court shall take judicial notice:

(1) of the common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States; and

(2) of any other law when requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice.

(1) Judicial notice of the laws of this state and of the United States may be taken at any stage of the proceedings.

(2) Any party may present to the judge or court any admissible evidence of law. To enable a party to offer evidence of the law other than of this state and of the United States or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse party either in the pleadings or otherwise.

(g) Question for the court. Except as otherwise provided by law, the determination of law shall be made by the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Article III
Presumptions

Rule 301. Presumptions in general.

(a) Presumption defined. A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding.

(b) Classification and effect of presumptions.

(1) Conclusive presumptions are presumptions that are specifically declared conclusive by statute. Conclusive presumptions may not be controverted.

(2) All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted. A disputable presumption may be overcome by a preponderance of evidence contrary to the presumption. Unless the presumption is overcome, the trier of fact must find the assumed fact in accordance with the presumption.

(c) Inconsistent presumptions. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If considerations of public policy are of equal weight the court shall disregard both presumptions.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 302. Applicability of federal law in civil cases.

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Article IV
Relevancy and Its Limits

Rule 401. Definition of relevant evidence.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 404. Character evidence not admissible to prove conduct, exceptions; other crimes; character in issue.

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same.

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case or in an assault case where the victim is incapable of testifying to rebut evidence that the victim was the first aggressor.

(3) Character of witness. Evidence of the character of a witness, as provided in Article VI.

(b) Other crimes, wrongs, acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Character in issue. Evidence of a person's character or a trait of character is admissible in cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 405. Methods of proving character.

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or where the character of the victim relates to the reasonableness of force used by the accused in self defense, proof may also be made of specific instances of that person's conduct.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 406. Habit; routine practice.

(a) Habit and routine practice defined. A habit is a person's regular response to a repeated specific situation. A routine practice is a regular course of conduct of a group of persons or an organization.

(b) Admissibility. Evidence of habit or of routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that conduct on a particular occasion was in conformity with the habit or routine practice.

(c) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 407. Subsequent remedial measures.

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 20, 2007, eff. Oct. 1, 2007.

Rule 408. Compromise and offers to compromise.

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 409. Payment of expenses.

Evidence of payment of expenses occasioned by an injury or occurrence is not admissible to prove liability.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 410. Offer to plead guilty; nolo contendere; withdrawn plea of guilty.

Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Article V
Privileges

Rule 501. Privileges recognized only as provided.

Except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state, no person has a privilege to:

(1) refuse to be a witness;

(2) refuse to disclose any matter;

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 502. Identity of informer.

(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law.

(b) Who may claim the privilege. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions and limitations.

(1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

(2) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show facts relevant to determining whether the informer can, in fact, supply that testimony.

If the Court finds that the informer should be required to give the testimony, and the public entity elects not to disclose the informer's identity, the court on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the court may do so on its own motion. In civil cases, the court may make any order that justice requires.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 503. Waiver of privilege by voluntary disclosure.

(a) General rule. A person upon whom these rules confer a privilege against disclosure waives the privilege if the person or the person's predecessor while the holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

(b) Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of a particular joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 504. Privileged matter disclosed under compulsion or without opportunity to claim the privilege.

A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 505. Comment upon or inference from claim of privilege.

The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the court or counsel. No inference may be drawn therefrom.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Article VI
Witnesses

Rule 601. Competency in general; disqualification.

(a) General rule competency. Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witnesses. A person is disqualified to be a witness if the court finds that (1) the witness is incapable of expression concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the witness or (2) the witness is incapable of understanding the duty of a witness to tell the truth.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 602. Lack of personal knowledge.

A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 603. Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 604. Interpreters.

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 605. Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 606. Competency of juror as witness.

(a) At the trial. A member of the jury may not be called or testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

However, as an exception to this subdivision, a juror may testify and an affidavit or evidence of any kind be received as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (1) whether extraneous prejudicial information was improperly brought to the jury's attention; or (2) whether any outside influence was brought to bear upon any juror; or (3) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 607. Who may impeach; party not bound by testimony.

(a) The credibility of a witness may be attacked by any party, including the party calling the witness.

(b) No party is bound by the testimony of any witness.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 608. Evidence of character and conduct of witness.

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 609. Impeachment by evidence of conviction of crime.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is not admissible.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 610. Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by their nature the witness' credibility is impaired or enhanced.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 611. Mode and order of interrogation and presentation; re-examination and recall; confrontation.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination.

(1) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(2) Evidence developed on cross-examination may be considered by the trier of fact as proof of any fact in issue in the case.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(d) Re-examination and recall. A witness may be re-examined as to the same matters to which the witness testified only in the discretion of the court, but without exception the witness may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.

(e) Confrontation. Except as otherwise provided by constitution, statute, these rules, or other rules applicable to the courts of this state, at the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 612. Writings used to refresh memory.

If a witness uses a writing to refresh memory for the purpose of testifying, either

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 613. Prior statements of witnesses.

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 614. Calling and interrogation of witnesses by court.

(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute express or implied comment.

(c) Objections. Objections to the calling of a witness by the court or to the interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 615. Exclusion of witnesses.

At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Article VII
Opinions and Expert Testimony

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 703. Basis of opinion testimony by experts.

The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 704. Opinions on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Article VIII
Hearsay

Rule 801. Definitions.

The following definitions apply under this article:

(a) Statement. A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A declarant is a person who makes a statement.

(c) Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of subsequent fabrication, improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment,

made during the existence of that relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 802. Hearsay rule.

Hearsay is not admissible except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 803. Hearsay exceptions: availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time of the acts, events, conditions, opinions, or diagnosis, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. However, written reports from the Montana state crime laboratory are within this exception to the hearsay rule when the state has notified the court and opposing parties in writing of its intention to offer such report or reports in evidence at trial in sufficient time for the party not offering the report or reports (1) to obtain the depositions before trial of the person or persons responsible for compiling such reports, or (2) to subpoena the attendance of said persons at trial. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement

personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more, the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce or dissolution of marriage, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990; amd. Sup. Ct. Ord. Oct. 18, 1990; amd. Sup. Ct. Ord. June 20, 2007, eff. Oct. 1, 2007.

Rule 804. Hearsay exceptions: declarant unavailable.

(a) Definition of unavailability. Unavailability as a witness includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, (A) in civil actions and proceedings, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered; and (B) in criminal actions and proceedings, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, and redirect examination.

(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstance of what the declarant believed to be impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce or dissolution of marriage, legitimacy, relationship by blood, or family history, even though the declarant had no means of acquiring the personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of a combined statement conforms with an exception to the hearsay rule provided in these rules.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 806. Attacking and supporting the credibility of declarant.

When a hearsay statement, or a statement defined by Rule 801(d)(2)(C), (D), or (E) has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990; amd. Sup. Ct. Ord. June 26, 1990, eff. June 26, 1990; amd. Sup. Ct. Ord. June 20, 2007, eff. Oct. 1, 2007.**

Article IX

Authentication and Identification

Rule 901. Requirement of authentication or identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Method provided by statute or rule. Any method of authentication or identification provided by statute, these rules, or other rules applicable in the courts of this state.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 902. Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. Except as otherwise provided by statute, a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this state.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.**

Rule 903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Article X
Contents of Writings, Recordings, and Photographs

Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. Writings and recordings consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. Photographs include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(4) Duplicate. A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(5) Copies of entries in the regular course of business. A copy of an entry in the regular course of business consists of an entry in a writing kept in the regular course of business copied from another such writing by manual or mechanical means at or near the time of the transaction.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1002. Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1003. Admissibility of duplicates, copies of certain entries.

A duplicate, or copy of an entry in the regular course of business as defined in Rule 1001(5), is admissible to the same extent as an original unless:

(1) a genuine question is raised as to the authenticity of the original; or

(2) in the circumstances it would be unfair to admit the duplicate or copy of an entry in the regular course of business in lieu of the original; or

(3) otherwise provided by statute.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1004. Admissibility of other evidence of contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 1005. Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1007. Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 1008. Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

History: En. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

History: En. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1007. Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

History: En. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977; amd. Sup. Ct. Ord. June 7, 1990, eff. June 7, 1990.

Rule 1008. Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.

History: En. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.